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Supreme Court, U.S.  
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In The  
**Supreme Court of the United States**

—◆—  
IN RE CARLO E. JOHNSON,

*Petitioner.*

—◆—  
**On Petition For Writ Of Mandamus  
To The United States District Court  
For The Eastern District Of Pennsylvania**

—◆—  
**PETITION FOR WRIT OF MANDAMUS**

—◆—  
CARLO E. JOHNSON  
874 Douglass Ave.  
Elkins Park, Pa. 19027  
215-886-8508  
*Pro Se Petitioner*

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**QUESTION PRESENTED**

Where government officials submitted intentionally false information in U.S. District Court to obtain the decision in *Carlo Johnson v. Martin Dragovich et al.*, is petitioner entitled to relief under Rule 60 Section (b) clause (3) of Federal Rules of Civil Procedure?

## LIST OF PARTIES

The respondents are Pennsylvania Governor Edward Rendell, Attorney General of Pennsylvania Tom Corbett, Philadelphia District Attorney of Philadelphia Lynn Abraham, Philadelphia Federal Prosecutor Thomas W. Dolgenos and Montgomery County Assistant District Attorney Robert M. Falin.

The petitioner's trial judge the Honorable Jane Cutler Greenspan received a copy but is not a respondent.

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## **PETITION FOR WRIT OF MANDAMUS**

Petitioner Carlo E. Johnson respectfully pray that writ of mandamus issue to review the habeas corpus denial of the United States District Court which was affirmed by The United States Third Circuit Court Appeals.

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## **OPINIONS BELOW**

The Superior Court decision written by the Honorable Kate Ford Elliot is docketed as Journal Number J. E01004/98.

The decision of the United States District Court dated January 17, 2001 c.v. 00-1097 Carlo Johnson v. Martin Dragovich et al. is unreported. It is reproduced as Appendix A. P.A.C.E.R. records pertaining to June 26, 2001 habeas denial No. 01-1325 of the United States Third Circuit Court of Appeals are reproduced as Appendix B. July 26, 2007 the United States Court of Appeals for the Third Circuit, Order C.A. No. 07-2932 is reproduced as Appendix C.

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## **JURISDICTION**

Pursuant the All Writs Act, 28 U.S.C. § 1651(a). The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriated in aid of their respective jurisdictions and agreeable to usages and principles of law.

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## STATUTE INVOLVED

Federal Rules of Civil Procedure Rule 60 section (d) clause (3) provide:

- (b) "GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;"
- 

## STATEMENT OF THE CASE

### A. Background

On January 17, 2001 petitioner Carlo Johnson was denied habeas corpus relief from the United States District Court for the Eastern District of Pennsylvania. The decision of the District Court affirms a conviction of third degree murder based on the opinion written by the Honorable Kate Ford Elliot of the Superior Court of Pennsylvania (Journal Number J. E01004/98).<sup>1</sup> The order written by the

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<sup>1</sup> We find that the Commonwealth's circumstantial evidence amply establishes that appellant was guilty of conspiracy to commit third-degree murder. Appellant knew throughout the night of November 11, 1994 that his cohorts from the Abington group were planning to commit violent attacks on members of the Fox Chase group (pg.13 J. E01004/98).

Honorable Judge Clarence C. Newcomer states in his footnote,

"A panel of the Superior Court also determined that it could not address his sufficiency of the evidence argument. Accordingly it vacated petitioner's sentence and remanded the case for clarification of the conspiracy charge for which he was convicted. However, the Commonwealth petitioned for *en banc* Reargument, and the Superior Court granted the petition. Upon Reargument, the Superior Court held that there was sufficient evidence to support petitioner's conviction for conspiracy". (pg.4 Order Approving and Adopting Report and Recommendation Dismissing petition for Writ of Habeas Corpus c.v.00-1097 *Carlo Johnson v. Martin Dragovich et al.*)<sup>2</sup> (Appendix A)

On June 26, 2001 a panel of the United States Third Circuit Court of Appeals, Authoring Judge Thomas L. Ambro, agrees with the findings of the District Court stating in the denial, "we find, for essentially the same reasons given by the District court in denying his petition, that the denial has

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<sup>2</sup> The Report and Recommendation contained in **Appendix A** states, "The Superior Court granted reargument. The Court ultimately agreed with the Commonwealth that the object of the conspiracy was to murder Eddie Polec, and held there was sufficient evidence to support Mr. Johnson's conviction for conspiracy. *Id.* at 791" (pg.4 Report and Recommendation 12/1/2000 No. 00-1097 *Carlo Johnson v. Martin Dragovich, et al.*).

failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. Section 2253(c)(2)."<sup>3</sup> (P.A.C.E.R. attachment Docket No. 01-1325) (Appendix B)

On July 26, 2007 the United States Court of Appeals for the Third Circuit, Authoring Judge Morton I. Greenberg, denied petitioner's second and successive habeas corpus petition stating,

"The foregoing application to file a second or successive 2254 petition is denied. Johnson has failed to make a *prima facie* showing that: (1) the claim relies on a retroactively applicable "new rule" of constitutional law; or (2) "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." See 28 U.S.C. 2244(b)(2) Order (C.A. No. 07-2932) (Appendix C)

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<sup>3</sup> Circuit Judge Maryanne Trump Barry violated Internal Operating Procedure 26.1.2 Notice of Possible Judicial Disqualification. The Honorable Barry sat on panel No. 01-1325 June 26, 2001 and related case *Anthony Rienze v. Frank Gills, et al.* No. 05-3349 (10/24/2005) Authoring Judge Samuel Alito.

## B. The Decisions Below

The decisions rendered by The United States District Court for the Eastern District of Pennsylvania and The United States Court of Appeals for the Third Circuit affirm fraudulent information supplied by Commonwealth's Attorneys. The opinion cited in petitioner's habeas corpus denial, J. E01004/98 written by the Honorable Kate Ford Elliot of the Superior Court of Pennsylvania dated October 23, 1998 only applied to petitioner's co-defendants at: *Commonwealth v. Crook* 1194PHL96, *Commonwealth v. Pinero* 1281PHL96, *Commonwealth v. Rienzi* 1324PHL96, *Commonwealth v. Alexander* 1325PHL96, and *Commonwealth v. Khathavong* 1470PHL96, according to the **Atlantic Reporter, 2d Series**. Footnoted beside each of petitions co-defendants states, "A petition for reargument was filed and granted at No. 1425PHL96. The petition for reargument was granted on February 26, 1998. Therefore, this decision is only for the cases at: 1194, 1281, 1324, 1325 and 1470 PHL 96." (Pages of the **Atlantic Reporter, 2d Series**) (*Exhibit A*)

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## REASONS FOR GRANTING THE WRIT

### I. **Montgomery County Assistant District Attorney Robert M. Falin and Philadelphia Federal Prosecutor Thomas W. Dolgenos Committed Fraud in U.S. Court of Appeals**

According to the **Atlantic Reporter, 2d Series** opinion J. E01004/98 (October 23, 1998) is only for the cases at: 1194, 1281, 1324, 1325 and 1470 PHL96. The Attorneys for the Commonwealth used this opinion in U.S. Federal Court as if it overturned or reversed the Per Curiam Order dated 12/16/1997 of the Superior Court.

On December 16, 1997 the Superior Court of Pennsylvania vacated, and remanded petitioner's sentence for further clarification of the conspiracy charge (Journal number: J-A45026-97).<sup>4</sup> The Per Curiam order of the Superior Court of Pennsylvania states,

"In his appeal, appellant Johnson argues that the evidence was insufficient to sustain his conviction for Conspiracy. His argument is based on his contention that he was convicted of conspiracy to commit third degree murder. However, our review of the record reveals that Johnson was never charged with conspiracy to commit murder. The Criminal information filed by the Commonwealth

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<sup>4</sup> The information pages filed by the Commonwealth and the certified trial court record contained in **Exhibit C** supports the decision of the Original panel of the Superior Court.



against Johnson stated only that Johnson and others agreed with others to commit a crime, and denied the criminal objective as "to beat Eddie Polec." Nowhere in the information filed against Johnson was there an allegation regarding a conspiracy to kill or murder Polec. As the information did not allege the crime of conspiracy to commit murder, Johnson could not have been convicted of such a crime. "The law is clear that a defendant cannot be convicted of an offense which is not the accusation made against him." *Commonwealth v. Speller*, 311 Pa. Super. 569, 579, 458 A.2d 198, 203 (1983); Pa.R.Crim.P.225(d) ("In all cases tried on an information, the issues at trial shall be defined by such information" (pg.26-28 J-A45026-97). (*Exhibit B*)

Under U.S. Code Title 18: Section 1018. Official certificates or writings, the Commonwealth Attorneys committed a crime of fraud.<sup>5</sup>

"Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as

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<sup>5</sup> The prosecutors knew the official outcome of the State appellate courts. Further proof of the fraud is contained in **Exhibit D**. The Commonwealth copied the signature of the original court order to the opinion of the Honorable Kate Ford Elliot. The signatures are not contained in the attached Appendix, but can be found on the original documents sent to the Court.

true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both."

Montgomery County A.D.A Robert M. Falin and Philadelphia Federal Prosecutor Thomas W. Dolgenos represented the respondents in the matter of c.v. 00-1097 *Carlo Johnson v. Martin Dragovich et al.* These prosecutors knew the respondents had no information holding petitioner for murder.

Fraud, by contrast, is the intentional misstatement or omission of a material fact made with knowledge of its falsity or in reckless disregard for whether it is true or false. *E.g.*, *SEC v. Infinity Group Co.*, 212 F.3d 180, 191-92 (3d Cir. 2000), *cert. denied*, 532 U.S. 905 (2001) (actionable securities fraud consists of knowing or reckless misstatements or (omissions); *McLean v. Alexander*, 599 F.2d 1190, 1197 & n.12 (3d Cir. 1979) (same, collecting cases). Fraud is both a criminal and civil law concept. Unlike perjury, fraud does not depend upon an affirmative false statement; it may rest upon an omission to state a material fact that the actor is under a duty to disclose or that is necessary to make the facts stated not misleading. *Bronston v. U.S.*, 409 U.S. 352, 358 n.4 (1973) (criminal fraud, unlike perjury, "goes 'rather far in punishing intentional creation of false impressions by a selection of literally true representations, because the actor himself generally selects and arranges the

representations'") (citation omitted); *Kline v. First Western Gov't Sec.*, 24 F.3d 480, 491 (3d Cir. 1994); *SEC v. Coffey*, 493 F.2d 1304, 1314 (6th Cir. 1974). Fraud also does not require that the actor know his statements and omissions to be false; the actor may answer for fraud if he acts in reckless disregard for whether his statements and omissions are true or not. *Infinity Group Co.*, 212 F.3d at 191-92; *First Commodity Corp. v. Commodity Futures Trading Comm.*, 676 F.2d 1, 6-7 (1st Cir. 1982).

## **II. The U.S. District Court and U.S. Third Circuit Court of Appeals Violated Petitioner's Constitutional Rights of Due Process of Law**

The decisions rendered by both U.S. Federal Courts held petitioner accountable for the crime of criminal conspiracy to commit third degree murder. Petitioner was convicted and sentenced to criminal conspiracy to commit aggravated assault. The decisions of the U.S. Federal Courts affirm a statutory increase in punishment which is impermissible ex post facto law. See *Collins v. Youngblood*, 497 U.S. 37 (1990). The *Due Process Clause* does not permit retroactive judicial decisions. See *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277 (1867); *Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867); *Carnell v. Texas*, 529 U.S. 513 (2000). Retroactive procedural statutes that work to deny a defense, bar the practice of law, increase punishment, or increase the likelihood of conviction may violate the *Ex Post Facto Clause*.

According to the notes of testimony, at sentencing petitioner's trial judge the Honorable Jane Cutler Greenspan stated,

"The only convictions here, in this entire case, from this same jury were as to Mr. Polec. So, as to whether it was Conspiracy to commit Aggravated Assault, or Conspiracy to commit Murder, I may have a question, but there is no question, given the fact that they came back with a not guilty as to Mr. Stuber there is no question that the Conspiracy applies, at a minimum, to Aggravated Assault, F-1. There is no question of that (pg. 362 N.T. 3/19/1996)." (*Exhibit E*)

Also, contained in Exhibit E are prison records and criminal history report from the Pennsylvania State Police which states petitioner was incarcerated for criminal conspiracy to commit aggravated assault not third degree murder. The inferior courts ignored facts of the trial court record, state appellate court records and the prison records holding petitioner.<sup>6</sup>

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<sup>6</sup> Both U.S. Federal Courts allowed Montgomery County A.D.A Robert M. Falin to represent the Commonwealth in habeas corpus *Carlo Johnson v. Martin Dragovich et al.* and *Anthony Rienze v. Frank Gills, et al.* in clear violation Rule 18 of FEDERAL RULES OF CRIMINAL PROCEDURE. Montgomery County did not formally charge Carlo Johnson or Anthony Rienze in the death of Edward Polec.

### III. This Court Should Provide Petitioner a Remedy for the Government's Fraud

The fraud in this case occurred in United States District Court and was perpetuated in United States Third Circuit Court of Appeals by the Commonwealth. Petitioner is unable to overcome the judicial bias of the court created by the fraudulent information and call for this Court to exercise its Supervisory Powers. Proof of bias can be found in petitioner's complaint denial from the Judicial Council of The Third Circuit. *Chief Judge Scirica* writes,

"This is a complaint filed pursuant to 28 U.S.C. 351 against United States Magistrate Judge (Respondent). Complainant is a prisoner serving a state sentence for a conviction involving a homicide.

Respondent entered a Report and Recommendation in 2000 recommending that habeas corpus petition filed by Complainant be denied. The District Judge approved and accepted that Recommendation and dismissed the petition. On appeal, the Third Circuit denied a certificate of appealability." (pg. 1 **MEMORANDUM OPINION J.C. No. 07-18** date 8/2/2007)<sup>7</sup> (Appendix C)

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<sup>7</sup> The Honorable Faith Angell wrote both report and recommendations in the matter of *Carlo Johnson v. Martin Dragovich et al.* and *Anthony Rienze v. Frank Gills, et al.* in violation **Internal Operating Procedure 26.1.2 Notice of Possible Judicial Disqualification.**



The Honorable Chief Scirica's statement, "Complainant is a prisoner serving a state sentence for a conviction involving a homicide," clearly displays the bias of the Court. The information contained in the complaint (*Exhibits A-D*) to the Judicial Council more than adequately showed that not only was petitioner not a prisoner, it also illustrated the fact that petitioner severed a sentence for assault not homicide. Petitioner believes the inferior courts are not inclined to review any information which renders the Commonwealth's case invalid. It is in these unusual circumstances that an extraordinary writ such as the writ of *coram nobis* is appropriate to correct fundamental errors and prevent injustice. See *United States v. Correa-De Jesus*, 708 F.2d 1283 (7th Cir. 1983).

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### CONCLUSION

This case involves a fraud which occurred in the U.S. Federal Courts. Petitioner's conviction was vacated and remanded on 12/16/1997. The Commonwealth used information it knew to be false to deny petitioner habeas corpus relief in 2001 for the same sentence which was vacated four years prior. One could argue a number of violations of civil and constitutional rights committed by the Commonwealth of Pennsylvania involving this case, but the fraud upon the U.S. Courts is apparent. The fact that petitioner received habeas corpus denials from the United States District Court and the United States Court

of Appeals for the Third Circuit after petitioner's sentence was vacated is proof itself.

For all these reasons the petition for writ of mandamus should be granted.

Respectfully submitted,

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*Pro Se Petitioner*

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**APPENDIX A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA**

CARLO JOHNSON : CIVIL ACTION  
v. :  
MARTIN DRAGOVICH, et al. : NO. 00-1097

**REPORT AND RECOMMENDATION**

M. FAITH ANGELL  
UNITED STATES  
MAGISTRATE JUDGE

December 1, 2000

Presently before this Court is a petition for writ of habeas corpus, filed, pursuant to U.S.C. §2254, by a state prisoner. Petitioner is currently incarcerated at the State Correctional Institution ["SCI"] Mahoney in Frackville, Pennsylvania, where he is servicing a five to ten year sentence for criminal conspiracy for his role in a murder. For the reasons which follow, it is recommended that the instant habeas petition be denied without an evidentiary hearing.

**BACKGROUND<sup>1</sup>**

On January 31, 1996, a jury presided over by the Honorable Jane Cutler Greenspan of the Philadelphia

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<sup>1</sup> The facts in this discussion have been taken from Mr. Johnson's habeas petition, the response of the District Attorney of Philadelphia County, and the state court records.



## App. 2

Court of Common Pleas, convicted petitioner of criminal conspiracy for his role in the murder of sixteen-year old Eddie Polec.<sup>2</sup> Judge Greenspan sentenced Mr. Johnson to a term of imprisonment of five to ten years and fined him \$15,000.

The facts underlying Mr. Johnson's conviction were described by the Superior Court as follows:

On November 4, 1994, an argument occurred in the Fox Chase section of Philadelphia between a group of teenagers from Abington and a group of teenagers from Fox Chase. One of the Abington teenagers, Jessica Simons, told Bou Khathavong about the incident. During the following week, Khathavong recruited a group of people from Abington to go to Fox Chase to seek revenge.

On November 11, 1994, Anthony Rienzi, Kevin Convey, and other teenagers went to Philadelphia to purchase marijuana. A short time later, Rienzi and Convey met Khathavong and appellant. Khathavong told the group he wanted to meet some of the people who usually gathered at the Fox Chase Recreation Center at a McDonald's at 10:30 p.m.

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<sup>2</sup> Mr. Johnson was tried jointly with five other defendants all of whom were convicted of conspiracy. Johnson was charged with various offenses, including criminal homicide, aggravated assault, recklessly endangering another person, and criminal conspiracy against victims Richard Stuber and Eddie Polec, but was only convicted of criminal conspiracy with respect to victim Eddie Polec.

### App. 3

Appellant, Khathavong, Rienzi, and Convey then went to Thomas Crook's house to recruit more people for the fight they expected to occur at the McDonald's, with Khathavong in particular calling people for this purpose. While at Crook's house, appellant talked about 'curbing' somebody, which he explained to mean that 'if somebody was laying down on their stomach, he would open their mouth up over the corner of the curb and kick down the back of their head.' (Notes of Testimony, 1/23/96 at 25-26.) After the group left Crook's house in two cars, Nicholas Pinero joined the group in his car. The three cars then went from the McDonald's to Rob Cofield's house. Cofield was not at home. While the group was waiting in the street for Cofield, appellant walked two houses up the street to Sonny Castorina's house and retrieved two wooden baseball bats. (*Id.* at 33.) The car containing Rienzi and Convey also contained a baseball bat.

While these events were occurring, a group of teenagers including the victim, was gathering at the Recreation Center. At approximately 9:30 p.m., some members of this group went to McDonald's, where they encountered some of the Abington teenagers. The Fox Chase group fled, and at some point the Abington group got out of their cars and began pursuit. Dewan Alexander and Nicholas Pinero hit victim John Atkinson with a baseball bat, then hit Matt Malone when he tried to assist Atkinson. Appellant slammed another victim, Richard Stuber, to the

#### App. 4

ground. Stuber also suffered head injuries from a broken bottle. The group from Abington got back in their cars and drove around looking for more Fox Chase teenagers. They exited at St. Cecilia's Church, where they encountered Eddie Polec and his brother Billy. Convey swung a baseball bat at Eddie Polec, and though he missed, Polec fell while trying to avoid the attack. Once on the ground, Polec was struck several times by Convey. Crook, Rienzi, Alexander, and Pinero then gathered around. Rienzi hit Polec in the head with the bat, then picked up Polec and held him while Pinero hit Polec in the face and head several times with a bat. Alexander kicked Polec several times in the head with the steel-toed boots he was wearing. The group then fled the scene, leaving Polec mortally wounded; he died the next morning.

Appellant stood trial for several weeks in January 1996 along with co-defendants Crook, Pinero, Rienzi, Alexander, and Khathavong. Convey pleaded guilty and testified on behalf of the Commonwealth. On February 5, 1996, Crook, Pinero, and Rienzi were found guilty of third degree murder and criminal conspiracy with respect to Mr. Polec (Notes of Testimony, 2/5/96 at 21, 26, 33.) Alexander was found guilty of voluntary manslaughter and criminal conspiracy with respect to Mr. Polec. *Id.* at 29.) Khathavong was found guilty of criminal conspiracy.

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Appellant was convicted of criminal conspiracy with respect to Mr. Polec, and was acquitted of all other charges (*Id.* at 25.)

*Commonwealth v. Johnson*, 719 A.2d 778, 781-82 (Pa. Super. 1998).

Mr. Johnson appealed to the Pennsylvania Superior Court. On appeal he raised numerous claims of error. A panel of the Superior Court found no merit in most of the issues presented by Mr. Johnson, but determined that it could not address his sufficiency of the evidence argument. *Id.* at 782. Mr. Johnson's sentence was vacated and remanded for a clarification of the conspiracy charge for which he was convicted. *Id.* The panel reasoned that "because the Commonwealth's criminal information defined the criminal objective of appellant's alleged conspiracy as 'to beat Edward Polec', appellant was never charged with conspiracy to commit murder." *Id.*

The Commonwealth petitioned for *en banc* reargument, reasoning that there was no need for a remand because it was clear that the information charged Mr. Johnson with conspiracy to commit murder. *Id.* at 783. The Superior Court granted reargument. The Court ultimately agreed with the Commonwealth that the object of the conspiracy was to murder Eddie Polec, and held there was sufficient evidence to support Mr. Johnson's conviction for conspiracy. *Id.* at 791.

Other issues raised on appeal, according to the *en banc* Superior Court, included the following claims:

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(1) the prosecutor engaged in prosecutorial misconduct when he referred both during his opening statement and closing argument to a co-defendant's confession which was never introduced at trial; (2) the prosecutor engaged in a series of acts which constitute prosecutorial misconduct during his closing to the jury, the cumulative effect of which was to deny Johnson a fair and impartial trial; (3) the trial court erred by not granting a defense request for a mistrial during the prosecutor's closing argument; and (4) the actions and comments of the trial court demonstrated bias and prejudice requiring a new trial or a re-sentencing hearing for Johnson. *Id.* at 783-84. The *en banc* Superior Court considered and rejected all claims of error, affirming the judgment of sentence. *Id.* at 791.

A Petition for Allowance of Appeal with the Pennsylvania Supreme Court, was filed on or about November 23, 1998, in which Mr. Johnson claimed that the evidence was insufficient to support his conviction for criminal conspiracy and that the prosecutor engaged in misconduct during closing argument. In an Order dated June 25, 1998, the Supreme Court declined to review the case. *Commonwealth v. Johnson* No. 594 E. D. Alloc. Dkt. 1998 (Pa. 1998).

On February 18, 2000, Mr. Williams filed the instant habeas petition. As grounds for relief, he argues one claim: "Petitioner was denied due process of law by the prosecutor's venomous summation that compared his attorney to Hitler and Goebbels and his defense to 'the Big Lie'".



## App. 7

In responding to the instant habeas petition, the Commonwealth argues: (1) the claim is procedurally defaulted because petitioner did not raise it as a due process violation in state court, and (2) petitioner has failed to demonstrate that he is entitled to relief under 28 U.S.C. § 2254(d).

### DISCUSSION

#### A. Exhaustion/Procedural Default

The exhaustion rule, codified in 28 U.S.C. § 2254<sup>3</sup>, requires a federal court to postpone habeas

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<sup>3</sup> The exhaustion requirements of 28 U.S.C. § 2254 provide:

(b)(1) An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(Continued on following page)

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corpus jurisdiction, absent exceptional circumstances, until "the applicant has exhausted the remedies available in the courts of the State." The exhaustion requirement is rooted in considerations of comity; the statute is designed to protect the role of the state court in enforcement of federal law and to prevent disruption of state judicial proceedings. *Rose v. Lundy*, 102 S.Ct. 1198, 1203 (1982); *Castille v. Peoples*, 109 S.Ct. 1056, 1059 (1989).

In order to demonstrate compliance with the exhaustion requirement, a habeas petitioner must show that each claim which forms the basis of his federal habeas petition has been "fairly presented" to the State courts. *Castille v. Peoples*, 109 S.Ct. 1056, 1059 (1989); *Picard v. Connor*, 404 U.S. 270, 275 (1971). Absent exceptional circumstances, the petitioner must first present all of his constitutional claims to the trial court, the Superior Court of Pennsylvania and then the Supreme Court of Pennsylvania before seeking relief in federal court. See *Picard v. Connor*, 404 U.S. at 275 (1971); *Swanger v. Zimmerman*, 750 F.2d 291 (3d Cir. 1984).

The burden is on the habeas petitioner to prove all facts which entitle him to a discharge from custody, including the facts relevant to the exhaustion

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(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

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requirement. *Burkett v. Cunningham*, 826 F.2d 1208, 1218 (3d Cir. 1987).

In the instant case, I find that Mr. Johnson's prosecutorial misconduct claim has been properly exhausted for habeas purposes, as it was presented on direct appeal to the Pennsylvania Supreme Court.<sup>4</sup> The Third Circuit stated in *Evans v. Court of Common Pleas*, "that when deciding whether a federal claim has been fairly presented, 'the appropriate focus . . . centers on the *likelihood* that the presentation in state court alerted that tribunal to the claim's federal quality and approximate contours.'" *Evans v. Court of Common Pleas*, 959 F.2d 1227, 1232 (3d Cir. 1992) (citations omitted).

Having reviewed the state court records, and, in particular, the allocatur brief, I find that the argument presented is sufficient to alert the state Supreme Court that Mr. Johnson was asserting a due process claim. Thus, I find that the claim has been properly exhausted and will address the merits of the prosecutorial misconduct claim.

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<sup>4</sup> The prosecution contends that although the petitioner presented the facts of his claim to the Pennsylvania Supreme Court, he failed to present the legal theory that he advances in the federal habeas petition; namely, that the prosecutor's alleged misconduct rose to the level of a due process violation.



**B. Merits**

**1. Standard of Review**

Because Mr. Johnson's habeas petition was filed after the effective date of the Antiterrorism and Effective Death Penalty Act ("AEDPA")<sup>5</sup>, the amended habeas standards apply to this case.

In the instant case, Mr. Johnson's claims were considered, and rejected, on the merits by the Superior Court on direct appeal. AEDPA precludes habeas relief on "any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding." 28 U.S.C. § 2254(d).

In interpreting the above language, the Third Circuit has discussed the appropriate degree of deference which the AEDPA requires a federal habeas court to accord a state court's construction of federal constitutional issues and interpretation of

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<sup>5</sup> Pub.L.No. 104-132, 110 Stat. 1214, 1219 (1996), effective date April 24, 1996.

Supreme Court precedent. See *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877 (3d Cir.), *cert. denied*, 120 S.Ct. 73 (1999). The Third Circuit has held that under 28 U.S.C. § 2254(d)(1), a two step inquiry is warranted. The majority agreed that:

(1) The proper initial inquiry for the habeas court is whether the state court decision was "contrary to" Supreme Court precedent that governs the petitioner's claim. Relief is appropriate only when the petitioner shows that "Supreme Court precedent requires an outcome contrary to that reached by the relevant state court." *Matteo*, 171 F.3d at 891.

(2) In the absence of such a showing, the habeas court then must ask whether the state court decision represents an "unreasonable application of" Supreme Court precedent. This inquiry is an objective one, namely, "whether the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified." *Matteo*, 171 F.3d at 891.

In a recent opinion, the United States Supreme Court discussed the scope of habeas review after AEDPA. See *Williams v. Taylor*, 120 S.Ct. 1495 (2000). According to the *Williams* majority:

We [the Supreme Court Justices] all agree that state-court judgments must be upheld unless, after the closest examination of the state-court judgment, a federal court is firmly convinced that a federal constitutional

right has been violated. . . . In sum, the [AEDPA] statute directs federal courts to attend every state-court judgment with utmost care, but it does not require them to defer to the opinion of every reasonable state-court judge on the content of federal law. If after carefully weighing all the reasons for accepting a state court's judgment, a federal court is convinced that a prisoner's custody . . . violates the Constitution, that independent judgment should prevail.

*Williams*, 120 S.Ct. at 1511.

## 2. Prosecutorial Misconduct Standard

The Supreme Court has held that federal habeas relief may be granted when the "prosecutorial misconduct may 'so infect the trial with unfairness as to make the resulting conviction a denial of due process.'" *Greer v. Miller*, 483 U.S. 756, 765 (1987) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974)). The Court also stated that for due process to have been offended, "the prosecutorial misconduct must be 'of sufficient significance to result in the denial of the defendant's right to a fair trial.'" *Id.* (citing *United States v. Bagley*, 473 U.S. 667, 676 (1985)). The appropriate standard of review for such a claim on writ of habeas corpus is the "narrow one of due process, and not the broad exercise of supervisory power." *Donnelly*, 416 U.S. at 642.

It is not enough, however, that the prosecutorial misconduct "is undesirable, erroneous, or even 'universally condemned.'" *Donnelly*, 416 U.S. at 643 (quoting *Cupp v. Naughten*, 414 U.S. 1010 141 (1973)). In evaluating whether the remarks of the prosecutor rise to the level of a constitutional violation, the remarks must be evaluated in the context of the whole trial. *Ramseur v. Beyer*, 983 F.2d 1215, 1239 (3d Cir. 1992). The remarks must be sufficiently prejudicial in the context of the entire trial to violate a petitioner's due process rights. *Greer*, 483 U.S. at 766 (citing *Donnelly v. DeChristoforo*, 416 U.S. at 639).

3. The Superior Court's Decision Rejecting the Prosecutorial Misconduct Claim is Neither Contrary to, Nor an Unreasonable Application of Established Law.

Mr. Johnson claims that he was "denied due process of law by the prosecutor's venomous summation that compared his attorney<sup>6</sup> to Hitler and Goebbels and his defense to 'the Big Lie'", and, therefore, is entitled to a new trial.

The Superior Court rejected this claim stating that the reference to "the Big Lie" was an attempt by

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<sup>6</sup> The trial transcript reveals, regarding "the Big Lie" reference, that the prosecutor was not referring specifically to Mr. Johnson's attorney, but to the attorney for co-defendant Khathavong. See (N.T. 1/30/96, 110).

the prosecutor to respond to defense arguments that the prosecution had manufactured evidence and manipulated witnesses. *Commonwealth v. Johnson*, 710 A.2d 778, 789 (Pa. Super. 1998). According to the state court, the reference to the "the Big Lie" does not "in and of itself exceed the bounds of oratorical flair." *Id.* The court also stated that "specific comparisons between counsel's tactics and those of Hitler and Goebbels were reprehensible, even in the heat of closing arguments." *Id.* at 789-790. Nevertheless, the Superior Court found "no reversible error in that the trial court carefully and forcefully instructed the jury to disregard such comments." *Id.* at 790.

The Superior Court's analysis is consistent with the standard of prosecutorial misconduct determined by the United States Supreme Court. The prosecutor's remarks were not sufficiently prejudicial in context of the entire trial to violate Mr. Johnson's due process rights. *See Greer*, 483 U.S. at 766 (citing *Donnelly v. DeChristoforo*, 416 U.S. at 639). There is no support that the Superior Court's ruling was contrary to clearly established Federal law, as determined by the United States Supreme Court.

Mr. Johnson has also failed to demonstrate that the Superior Court ruling was an incorrect and an unreasonable application of United States Supreme Court precedent. The Supreme Court has not addressed a case that is directly on point to the case at hand. However, several lower federal courts have decided similar claims in the same manner that Mr. Johnson's case was resolved by the Superior Court.



See *Kirk v. Petrelli*, 331 F. Supp. 792 (N.D. Ill. 1971) (curative instructions regarding the prosecutor's reference to defense counsel using Hitler's tactic of telling repeated lies did not amount to a constitutional violation.); *United States v. Sailor*, 831 F.2d 1064 (6th Cir. 1987) (prosecutor's reference to "the big lie" was simply not reversible error); *Fussell v. Morris*, 884 F.2d 579 (6th Cir. 1986) (prosecutor's comment that the defendant had mastered the technique of "the big lie" and comparison to Hitler, although improper, did not render the trial fundamentally unfair); *United States v. North*, 910 F.2d 843 (D.C. Cir.1990) (prosecutor's accusation that defendant had adopted Hitler's strategy of lying repeatedly did not rise to the level of reversible trial error).

Applying the habeas guidelines, post AEDPA, I found that Petitioner has not met his burden of showing that "Supreme Court precedent requires an outcome contrary to that reached by the relevant state court". Nor, did the state court's decision result in an outcome that cannot reasonably be justified. See *Matteo*, 171 F.3d at 891 (3d Cir. 1999). The Superior Court concluded that the prosecutor's comments was not reversible error since the trial court "carefully and forcefully instructed the jury to disregard such comments."<sup>7</sup> *Commonwealth v. Johnson*,

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<sup>7</sup> The curative instructions given by the trial court were as follows:

Members of the jury, before I begin my final charge to you, I want to give you cautionary instructions with  
(Continued on following page)

719 A.2d 778, 790 (Pa. Super. 1998). This conclusion, which is an objectively reasonable application of the federal standard, is binding on the habeas court.

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**RECOMMENDATION**

For the reasons stated above, it is recommended that Petitioner's habeas claim be DENIED AND DISMISSED WITHOUT AN EVIDENTIARY HEARING. It is further recommended a finding be made that there is no probable cause to issue a certificate of appealability.

BY THE COURT:

/s/ M. Faith Angell  
M. FAITH ANGELL  
UNITED STATES  
MAGISTRATE JUDGE

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regard to Mr. Casey's closing. In his argument, Mr. Casey may have referred to, I believe, blood lust, Hitler, Goebbels, the big lie and predators. Any such mention of any such words by Mr. Casey was improper and must be stricken by you and totally ignored by you.

(N.T. 1/31/96, 18-19).

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App. 17

**IN THE UNITED STATES  
DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

CARLO JOHNSON,	:	CIVIL ACTION
Petitioner,	:	
v.	:	
MARTIN DRAGOVICH,	:	
ET AL.,	:	
Respondents.	:	NO. 00-1097

**ORDER**

(Filed Jan. 17, 2001)

AND NOW, this 17th day of January, 2001, upon consideration of the Petition for Writ of Habeas Corpus, as filed by Petitioner, and after review of the Report and Recommendation of United States Magistrate Judge M. Faith Angell, and Petitioner's objections thereto, it is hereby ORDERED as follows:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The petition for a Writ of Habeas Corpus is DISMISSED.
3. A Certificate of appealability is DENIED.

**I. BACKGROUND**

On January 31, 1996, a jury presided over by the Honorable Jane Cutler Greenspan convicted petitioner of criminal conspiracy for his role in the



murder of sixteen year old Eddie Polec in the Philadelphia Court of Common Pleas. Petitioner was tried jointly with five other defendants, all of whom were convicted. While petitioner was convicted of criminal conspiracy, he was also charged with criminal homicide, aggravated assault, recklessly endangering another person. Judge Greenspan sentenced petitioner to five to ten years imprisonment and fined him \$15,000.

The Superior Court described the facts underlying petitioner's conviction as follows:

On November 4, 1994, an argument occurred in the Fox Chase section of Philadelphia between a group of teenagers from Abington and a group of teenagers from Fox Chase. One of the Abington teenagers, Jessica Simons, told Bou Khathavong about the incident. During the following week, Khathavong recruited a group of people from Abington to go to Fox Chase to seek revenge.

On November 11, 1994, Anthony Rienzi, Kevin Convey, and other teenagers went to Philadelphia to purchase marijuana. A short time later, Rienzi and Convey met Khathavong and appellant. Khathavong told the group he wanted to meet some of the people who usually gathered at the Fox Chase Recreation Center at a McDonald's at 10:30 p.m. Appellant, Khathavong, Rienzi, and Convey then went to Thomas Crook's house to recruit more people for the fight they expected to occur at the McDonald's, with Khathavong

in particular calling people for this purpose. While at Crook's house, appellant talked about 'curbing' somebody, which he explained to mean that 'if somebody was laying down on their stomach, he would open their mouth up over the corner of the curb and kick down the back of their head.' (Notes of Testimony, 1/23/96, at 25-26). After the group left Crook's house in two cars, Nicholas Pinero joined the group in his car. The three cars then went from the McDonald's to Rob Cofield's house. Cofield was not at home. While the group was waiting in the street for Cofield, appellant walked two houses up the street to Sonny Castorina's house and retrieved two wooden baseball bats. (*Id.* At 33). The car containing Rienzi and Convey also contained a baseball bat.

While these events were occurring, a group of teenagers, including the victim, was gathering at the Recreation Center. At approximately 9:30 p.m., some members of this group went to McDonald's, where they encountered some of the Abington teenagers. The Fox Chase group fled, and at some point the Abington group got out of their cars and began pursuit. Dewan Alexander and Nicholas Pinero hit victim John Atkinson with a baseball bat, then hit Matt Malone when he tried to assist Atkinson. Appellant slammed another victim, Richard Stuber, to the ground. Stuber also suffered head injuries from a broken bottle. The group from Abington got back in their cars and drove around looking for more Fox Chase teenagers. They

exited at St. Cecilia's Church, where they encountered Eddie Polec and his brother Billy. Convey swung a baseball bat at Eddie Polec, and though he missed, Polec fell while trying to avoid the attack. Once on the ground, Polec was struck several times by Convey. Crook, Rienzi, Alexander, and Pinero then gathered around. Rienzi hit Polec in the head with the bat, then picked up Polec and held him while Pinero hit Polec in the face and head several times with a bat. Alexander kicked Polec several times in the head with the steel-toed boots he was wearing. The group then fled the scene, leaving Polec mortally wounded; he died the next morning.

Appellant stood trial for several weeks in January 1996 along with co-defendants Crook, Pinero, Rienzi, Alexander, and Khathavong. Convey pleaded guilty and testified on behalf of the Commonwealth. On February 5, 1996, Crook, Pinero, and Rienzi were found guilty of third degree murder and criminal conspiracy with respect to Mr. Polec (Notes of Testimony, 2/5/96 at 21, 26, 33). Alexander was found guilty of voluntary manslaughter and criminal conspiracy with respect to Mr. Polec. (*Id.* At 29). Khathavong was found guilty of criminal conspiracy.

Appellant was convicted of criminal conspiracy with respect to Mr. Polec, and was acquitted of all other charges. (*Id.* at 25).

After his trial, petitioner appealed to the Pennsylvania Superior Court where a panel of judges

found no merit to most of petitioner's arguments, including the one he raises today – that the prosecutor engaged in misconduct during closing argument.<sup>1</sup>

Thereafter, petitioner filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court where Mr. Johnson claimed that the evidence was insufficient to support his conviction for criminal conspiracy, and that the prosecutor engaged in misconduct. In an Order dated June 25, 1998, the Supreme Court of Pennsylvania declined to review the case.

On February 18, 2000, petitioner filed the instant habeas petition. Thereafter, United States Magistrate Judge M. Faith Angel filed her report and recommendation that petitioner's habeas petition be denied. Consequently, petitioner filed his objections to the magistrate report where he raises one claim: that petitioner was denied due process of law by the prosecutor's summation that compared his attorney to Hitler and Goebbels and his defense to "the big lie." Thus, that is the issue the Court now addresses.

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<sup>1</sup> A panel of the Superior Court also determined that it could not address his sufficiency of the evidence argument. Accordingly it vacated petitioner's sentence and remanded the case for clarification of the conspiracy charge for which he was convicted. However, the Commonwealth petitioned for *en banc* reargument, and the Superior Court granted the petition. Upon reargument, the Superior Court held that there was sufficient evidence to support petitioner's conviction for conspiracy.

## II. DISCUSSION

If a party files timely written objections to the magistrate's findings and recommendation, this Court must conduct a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. *See* 28 U.S.C. § 636(b)(1)(C).

Accordingly, when a party applies for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, the judgment of a State court shall not be disturbed with respect to any claim it adjudicated on the merits unless the State court's decision "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).<sup>2</sup>

The Third Circuit has explained that section 2254(d)(1) requires a two-step analysis:

First, the federal habeas court must determine whether the state court decision was 'contrary to' Supreme Court precedent that governs the petitioner's claim. Relief is appropriate only if the petitioner shows that 'Supreme Court precedent requires an outcome contrary to that reached by the relevant state court.' In the absence of such a

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<sup>2</sup> Because petitioner filed his habeas petition after the effective date of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254(d)(1) applies here.



showing, the federal habeas court must ask whether the state court decision represents an 'unreasonable application' of Supreme Court precedent: that is, whether the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified. If so, then the petition should be granted.

*Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 891 (3rd Cir. 1999), *cert. denied*, *Matteo v. Brennan*, 528 U.S. 824 (1999) (citations omitted).

Here, petitioner objects to Magistrate Judge Angel's conclusion that the Pennsylvania Superior Court reasonably resolved his claim that he was denied due process when the prosecutor's summation compared petitioner's attorney to Hitler and Goebbels and his defense to "the big lie."

The Supreme Court has stated that federal habeas relief may only be granted where prosecutorial misconduct may "so infec[t] the trial with unfairness as to make the resulting conviction a denial of due process." *Greer v. Miller*, 483 U.S. 756, 765 (1987) (quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974)). To constitute a due process violation, the prosecutorial misconduct must be "of sufficient significance to result in the denial of the defendant's right to a fair trial." *Miller*, 483 U.S. at 765 (quoting *United States v. Bagley*, 473 U.S. 667, 676 (1985)). However, the mere fact that the prosecutorial misconduct is undesirable, erroneous or even universally condemned is insufficient. See *Donnelly*, 416 U.S. at 643.



In this case, the Court finds that the Superior Court's analysis is consistent [with] Supreme Court precedent concerning prosecutorial misconduct and due process. Additionally, the Court is not persuaded that the Superior Court ruling was an unreasonable application of Supreme Court precedent. The Superior Court rejected petitioner's claim that the prosecutor's comments amounted to reversible error when it found that while the prosecutor's comments were reprehensible, the trial court carefully and forcefully instructed the jury to disregard those comments. See *Commonwealth v. Johnson*, 719 A.2d 778, 789-90 (Pa. Super. Ct. 1998). Moreover, the Superior Court determined that the prosecutor's reference to "the big lie" was an attempt to respond to defense arguments that the prosecution had manufactured evidence and manipulated witnesses. Under these circumstances, the Court is convinced that the Superior Court's decision was consistent with Supreme Court precedent concerning prosecutorial misconduct and due process, and can be reasonably justified. See *Matteo*, 171 F.3d at 891.

In light of the foregoing discussion, the Court will deny the petitioner's petition.

AND IT IS SO ORDERED

/s/ Clarence C. Newcomer  
Clarence C. Newcomer, S.J.

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**APPENDIX B**

**Appeal From:** U.S. District Court for the District of Eastern Pennsylvania

**Case Type Information:**

- 1) civil
- 2) private
- 3) Habeas corpus

**Originating Court Information:**

**District:** 0313-2 : 00-cv-01097

**Magistrate Judge:** M. Faith Angell

**Date Filed:** 03/01/2000

**Date Order/Judgment:**

11/03/2000

**Date NOA Filed:**

11/13/2000

- 11/16/2000 CIVIL CASE DOCKETED. Notice filed by Carolyn A. Bryant.
- 11/16/2000 RECORD, received.
- 11/16/2000 TRANSCRIPT PURCHASE ORDER (PART I), no proceedings in District Court.
- 11/21/2000 ATTORNEY NOT PARTICIPATING: Norris E. Gelman advises that he will not participate in this appeal, received. [SEND TO MERITS PANEL]
- 11/27/2000 STAFF ATTORNEY LETTER SENT advising appeal has been listed for possible dismissal due to jurisdictional defect.
- 12/01/2000 APPEARANCE from Attorney Thomas W. Dolgenos on behalf of Appellees, filed.
- 12/11/2000 RESPONSE to Staff Attorney's letter for possible dismissal due to jurisdictional

defect by Appellant, filed. Certificate of Service dated 12/11/00.

01/30/2001 ORDER (Chief Judge Becker, Authoring Judge, Weis and Garth, Circuit Judges) Appellant Carolyn Bryant appeals the Magistrate Judge's order denying her "motion for leave to file an amicus brief and to expand the scope of issues on appeal: in the habeas corpus proceeding of Carlo Johnson. An appeal taken from a pretrial order of a Magistrate Judge must be appealed to the District Court Judge. 28 U.S.C. Section 636(b)(1)(A). Accordingly, the Clerk is directed to forward the notice of appeal to the District Court for docketing as an appeal to the District Court Judge. The appeal is dismissed for lack of appellate jurisdiction. Moreover, we note that several Courts of appeals have determined that the denial of a motion to participate as amicus curiae is not appealable. *Boston & Providence Railroad Stockholders Development Group v. Smith*, 333 F.2d 651 (2d Cir. 1964) (per curiam); *Clark v. Sandusky*, 205 F.2d 915 (7th Cir. 1953). See also *S.E.C. v. Better Life Club of America*, 1998 WL 389102, \*1 (D.C.Cir. 1998) (per curiam), filed. HPS-74

01/30/2001 Certified copy of order to Lower Court.

01/30/2001 RECORD, RETURNED.

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App. 27

**General Docket  
Third Circuit Court of Appeals**

**Court of Appeals Docket #:** 01-1325    **Docketed:**  
02/09/2001

**Termed:** 06/26/2001

**Nature of Suit:** 3530 Habeas Corpus

Johnson v. Dragovich, et al

**Appeal From:** U.S. District Court for the District  
of Eastern Pennsylvania

**Case Type Information:**

- 1) civil
- 2) private
- 3) Habeas Corpus-prisoner

**Originating Court Information:**

**District:** 0313-2 : 00-cv-01097

**District Judge:** Clarence C Newcomer,  
U.S. District Judge

**Date Filed:** 03/01/2000

**Date Order/Judgment:**  
01/18/2001

**Date NOA Filed:**  
02/06/2001

02/09/2001 CIVIL CASE DOCKETED. Notice filed  
by Carlo Johnson.

02/09/2001 RECORD (State Court Record included),  
received. (District Court Record and  
State Court Record contained in 2 boxes).

02/12/2001 STAFF ATTORNEY LETTER SENT  
advising case will be submitted to a panel  
of this Court for a decision on the issu-  
ance of certificate of appealability.

02/14/2001 APPEARANCE from Attorney Thomas W.  
Dolgenos on behalf of Appellees Martin

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Dragovich, DA Philadelphia and Atty Gen PA, filed.

- 02/15/2001 TRANSCRIPT PURCHASE ORDER (PART I), no proceedings in District Court.
- 02/26/2001 MOTION by Appellant Carlo Johnson for certificate of appealability, filed. Answer due 3/12/01. Certificate Service dated 2/26/01.
- 02/26/2001 MOTION by Appellant Carlo Johnson for certification of additional issues, filed. Answer due 3/12/01. Certificate of Service dated 2/26/01.
- 06/26/2001 ORDER (Sloviter, Barry and Ambro, Authoring Judge, Circuit Judges) denying request for a certificate of appealability because we find, for essentially the same reasons given by the District court in denying his petition, that the appellant has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. Section 2253(c)(2). The motion for certification of additional issues is denied because even if it were appropriate for this Court to address new claims on appeal, the motion is barred by the statute of limitations in 28 U.S.C. Section 2244(d). United States v. Duffus, 174 F.3d 333 (3d Cir. 1999). filed. APS-176
- 06/26/2001 Certified copy of order to Lower Court.

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06/26/2001 RECORD RETURNED. (Record and State Court Record Returned) (Record and State Court Record in 2 boxes)

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**General Docket**  
**Third Circuit Court of Appeals**

**Court of Appeals Docket #:** 07-2932 **Docketed:**  
06/28/2007

**In Re:** Johnson **Termed:** 08/16/2007

**Appeal From:** U.S. District Court for the District of Eastern Pennsylvania

**Case Type Information:**

- 1) original proceeding
- 2) shc-2244b
- 3) DC Civil Case

**Originating Court Information:**

**District:** 0313-2 :

**Date Filed:**

06/28/2007 Original Proceeding FOR LEAVE TO FILE second or successive petition pursuant to 28 U.S.C. Section 2244(b). Notice filed by Carlo Johnson.

06/28/2007 NONCOMPLIANCE LETTER requesting Petitioner submit additional documents in support of Sec. 2244 Petition within 21 days.

07/17/2007 COMPLIANCE from Petitioner of documents in support of 2244 petition, RECEIVED.



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- 07/17/2007 Compliance for 2244 petition received. Application is deemed filed.
- 07/26/2007 Submitted on application to file second/successive petition. Coram: Sloviter, Chagares and Greenberg, Circuit Judges.
- 08/16/2007 ORDER (Sloviter, Chagares and Greenberg, Authoring Judge, Circuit Judges) denying application for permission to file a (Habeas) second or successive Section 2254 petition. Johnson has failed to make a prima facie showing that: (1) the claim relies on a retroactively applicable "new rule" of constitutional law; or (2) "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." See 28 U.S.C. Section 2244(b)(2), filed. ALD-325
- 08/16/2007 Certified copy of order to Lower Court.
-

App. 31

**APPENDIX C**

OFFICE OF THE CLERK

**UNITED STATES COURT OF APPEALS**

FOR THE THIRD CIRCUIT

21400 United States Courthouse

601 Market Street

Philadelphia PA 19106-1790

[www.ca3.uscourts.gov](http://www.ca3.uscourts.gov)

June 28, 2007

Marcia M. Waldron  
Clerk

Telephone  
267-299-4916

Mr. Carlo Johnson  
874 Douglas Avenue  
Elkins Park, PA 19027

DA Philadelphia  
Office of District Attorney  
Three South Penn Square  
Philadelphia, PA 19107-3499

**RE: Docket No. 07-2932**  
**In Re: Johnson**

We have today docketed a motion requesting permission to file a second or successive petition in the United States District Court filed by **Carlo Johnson** at No. **07-2932** (28 U.S.C. Section 2244(b) and/or 2255). This docket number must appear on all documents related to this case which are submitted to this Court. A copy of the motion is enclosed for opposing counsel.

Any response to the motion must be *received in the Office of the Clerk* within seven (7) days from the

date of this letter. A response may be filed by facsimile provided that a signed original of the response is subsequently mailed to the Office of the Clerk. Third Circuit LAR 25.1.

Any motion authorizing the filing of a second or successive petition must be decided no later than 30 days after the filing of the motion. In light of the time period for disposition, **absolutely no extensions of time shall be granted.** If a response is received after the expiration of the response period, the Court may reach its decision without consideration of the untimely response.

**It should be noted that the grant or denial of an authorization by the Court of Appeals shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari (28 U.S.C. Section 2244(b)(E) (as amended April 26, 1996)).**

In the event the Court of Appeals authorizes the filing of a second or successive petition, petitioner should attach a copy of this Court's order granting such permission to any petition which is to be filed in the district court.

Very truly yours,  
MARCIA M. WALDRON  
Clerk

/s/ Anthony Infante  
By: Anthony W. Infante  
Case Manager

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OFFICE OF THE CLERK

**UNITED STATES COURT OF APPEALS**

FOR THE THIRD CIRCUIT

21400 UNITED STATES COURTHOUSE

601 MARKET STREET

PHILADELPHIA 19106-1790

Website: <http://www.ca3.uscourts.gov>

June 28, 2007

MARCIA M. WALDRON  
CLERK

TELEPHONE  
267-299-4916  
215-597-2995

Mr. Carlo Johnson  
874 Douglas Avenue  
Elkins Park, PA 19027

**In Re: Carlo Johnson**  
**C.A. No. 07-2932**

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Dear Mr. Johnson:

We are in receipt of your Motion under 28 U.S. §2244 for Order Authorizing District Court to Consider Second or Successive Application for Relief Under 28 U.S.C. §2255.

This application is incomplete, however. In addition to the documents you submitted, you must also file copies of the following documents:

1. the new habeas petition you propose to file; E.D. Pa. No. 00-cv-1097

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2. the petition(s) you filed in your prior habeas action(s); E.D. Pa. No. 00-cv-1097

*See Third Circuit LAR 22.5.*

You must file an original and 4 copies of the documents listed above within 21 days of the date of this letter. You must serve a copy of these documents on the District Attorney of Philadelphia County, and you must file a certificate of service with the Clerk of the Court of Appeals. Respondent may file a response within 7 days of the filing of your completed application. These deadlines supersede any other deadlines.

**Please note that you must order copies of these documents from the District Court Clerk's Office if they are no longer in your possession. There is a charge of \$.50 per page for copy work, payable to the Clerk of the District Court.**

Because the documents listed above were not included with your application and are necessary for its determination, your application is deemed lodged with the Court. No action will be taken regarding your application until copies of the above-listed documents are received by the Clerk. Your documents will be docketed as an amendment to your petition.

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Failure to file these documents may result in the dismissal of your case.

Very truly yours,  
MARCIA M. WALDRON, Clerk

/s/ Anthony Infante  
By: Anthony Infante  
Case Manager 267-299-4916

Enclosures

cc:

DA Philadelphia

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July 26, 2007

**UNITED STATES COURT OF APPEALS**  
**FOR THE THIRD CIRCUIT**

C.A. No. 07-2932

IN RE: CARLO JOHNSON,

Petitioner

Present: SLOVITER, CHAGARES AND GREENBERG,  
CIRCUIT JUDGES

Submitted is Petitioner's application pursuant to 28 U.S.C. § 2244 to file a second or successive habeas corpus petition

in the above-captioned case.

Respectfully,

Clerk

MMW/RL/awi

ORDER

The foregoing application for permission to file a second or successive § 2254 petition is denied. Johnson has failed to make a *prima facie* showing that: (1) the claim relies on a retroactively applicable "new rule" of constitutional law; or (2) "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant

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guilty of the underlying offense." See 28 U.S.C.  
§ 2244(b)(2).

By the Court,

/s/ Morton I. Greenberg  
Circuit Judge

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App. 38

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

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J.C. No. 07-18

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IN RE: COMPLAINT OF JUDICIAL  
MISCONDUCT OR DISABILITY

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ORIGINAL PROCEEDINGS  
UNDER 28 U.S.C. § 351

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MEMORANDUM OPINION

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(Filed: August 2, 2007)

Present: SCIRICA, *Chief Judge*.

This is a complaint filed pursuant to 28 U.S.C. § 351 against a United States Magistrate Judge (Respondent). Complainant is a prisoner serving a state sentence for a conviction involving a homicide.<sup>1</sup>

Respondent entered a Report and Recommendation in 2000 recommending that a habeas corpus

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<sup>1</sup> At the time that it occurred, that homicide, which involved a dispute between teenagers from different neighborhoods, received a large amount of media coverage. The victim, who was apparently not involved in the dispute died after being hit by a baseball bat and kicked with steel-toed shoes.

petition filed by Complainant be denied. The District Judge approved and accepted that Recommendation and dismissed the petition. On appeal, the Third Circuit denied a certificate of appealability.<sup>2</sup>

The complaint is somewhat enigmatic. It appears to argue that the habeas corpus petition was not decided correctly and, therefore, was never docketed. This assertion is apparently based on Respondent's characterization of the crime for which Complainant was convicted. The complaint states:

**A Writ of Habeas Corpus** is one of the most protected writs under the law. [Respondent] ruled, "**based on the record**" it is clear the conviction is *third degree murder*.

According to the Pennsylvania State Police Central Repository and the Certified record of the [state] Court the criminal conspiracy was not *Third Degree Murder*. In fact the conspiracy in question was an *(F2) Felony*.

The Docket Number [assigned the habeas petition] does not exist. The Freedom of Information & Privacy staff made it very clear that there are no records in the [District Court].

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<sup>2</sup> At this time Complainant has an application pursuant to 28 U.S.C. § 2244(b) for leave to file a second or successive habeas corpus petition pending.

**According to PACER [Respondent] not only misrepresented the court record, [Respondent] did not docket [the docket number assigned the petition].**

\* \* \*

[Respondent could have never docketed [the docket number assigned to the petition] without a warrant, bill of indictment, or certified record.

# I

The judicial misconduct statute provides a remedy if a federal judicial officer, "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a). A Chief Judge may dismiss a complaint brought under the statute if, after review, he finds that it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is legally frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. § 352(b)(1)(A)(i-iii).

Section 352(b)(1)(A)(ii) (formerly 28 U.S.C. § 372(c)(3)(A)(ii)), which provides for dismissal of complaints related to the merits of a decision or procedural ruling, reflects Congress' concern that a misconduct complaint not be used as vehicle by which disappointed litigants may challenge judicial action or inaction occurring in the course of litigation which

is reviewable by appeal or mandamus.<sup>3</sup> The Senate Report on 28 U.S.C. § 372(c) states, "It is important to point out what subsection (c) does not mean; it is not designed to assist the disgruntled litigant who is unhappy with the result of a particular case." S. Rep. No. 362, 96th Cong., 2d Sess. 8 (1980), *reprinted in* 1980 U.S.C.C.A.N. 4315, 4322.

## II.

Insofar as all of the allegations in the complaint ultimately turn on whether the Report and Recommendation made by the Respondent in the case were correct, the complaint must be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) as being directly related to judicial decisions and procedural rulings. The misconduct complaint procedures are not a means for an individual litigant to obtain corrective relief or to resolve errors in cases. Such relief is available only through the normal case-related procedures.

Referring to 28 U.S.C. § 372(c)(3)(A)(ii) (now 28 U.S.C. § 352(b)(1)(A)(ii)), the Judicial Council of the Ninth Circuit has stated:

There is . . . a statutory directive for dismissal of complaints of judicial misconduct

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<sup>3</sup> Effective November 2, 2002 the Judicial Improvements Act of 2002 replaced the former 28 U.S.C. § 372(c), which governed complaints of judicial misconduct or disability, with 28 U.S.C. § 351, *et seq.* Although certain additions and minor changes were made in regard to the complaint procedures, the substance of the former 28 U.S.C. § 372(c) remains intact.



which in substance are simply objections to substantive or procedural error. This principle is supported by compelling policy. To determine whether a judge's rulings were so legally indefensible as to mandate intervention would require the same type of legal analysis as is afforded on appeal.

*In re: Complaint of Judicial Misconduct*, 685 F.2d 1226, 1227 (Ninth Circuit Judicial Council 1982).

The claims that a docket for the habeas corpus petition does not exist and that a habeas corpus petition could not be docketed without the state charging documents and a certified record must be dismissed as legally frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii).<sup>4</sup>

Accordingly the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i)(ii) and (iii).

/s/ Anthony J. Scirica  
Chief Judge

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<sup>4</sup> Contrary to the assertion that the state court record was not certified to the District Court, that Court's docket reflects that the state record was received and forwarded to Respondent.

Since Respondent was not the official responsible for docketing the petition, the allegation that she failed to open a docket must be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i) as not cognizable under the statute since that statute only applies to judges.

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**EXHIBIT A****SUPERIOR COURT OF PENNSYLVANIA**

<b><u>TITLE</u></b>	<b><u>DOCKET NUMBER AND DISPOSITION</u></b>	<b><u>DATE</u></b>	<b><u>LOWER COURT DOCKET NUMBER/ COUNTY</u></b>
Castle Gas v. Equitrans .....	00286PGH97 Affirmed	12/23/97	GD93-10845 (Allegheny)
Caton v. Hardesty .....	02719PHL96 Vacated and Affirmed	12/05/97	92-FC-703 (Lehigh)
Chesley v. Chesley .....	01123PGH97 Modified	12/23/97	NS950800 (Erie)
Cillo v. Castle .....	00190HBG97 Affirmed	12/04/97	95-01974 (Lycoming)
Citicorp v. Ditizio .....	01805PHL96 Affirmed	12/22/97	265 Dec. T., 1995 (Philadelphia)
Cochran v. Elsten .....	00887PHL97 Affirmed	12/22/97	89-002481-16-2 (Bucks)
Cole v. Stanko <sup>4</sup> .....	01211PGH97 Affirmed	11/25/97	14721-1995 (Erie)
Coles v. Coles .....	00171PGH97 Reversed and Remanded	12/22/97	FD94-3556 (Allegheny)

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<sup>4</sup> Petition for reargument denied January 30, 1998

# App. 44

Com. v. Abbott.....	00474PHL97 Affirmed	12/17/97 95-05-1228½ (Philadelphia)
Com. v. Ackley.....	00839PHL97 Vacated and Remanded	12/31/97 96-32 (Sullivan)
Com. v. Afrasa.....	00517PHL97 Affirmed	12/30/97 1719-89 (Delaware)
Com. v. Akbar.....	01561PHL97 Affirmed	12/31/97 A1521, 96 (Montgomery)
Com. v. Alberts.....	01181PGH96 Reversed, Vacated and Remanded	12/18/97 CC 9511301 (Allegheny)
Com. v. Alexander <sup>5</sup> .....	01325PHL96 Affirmed	12/16/97 9412-442 5/7 (Philadelphia)
Com. v. Allen.....	01186PHL97 Affirmed	12/19/97 B1521-96 (Montgomery)
Com. v. Amick.....	00225HBG97 Affirmed	12/15/97 CC-26-96 (Adams)
Com. v. Arocho.....	00071HBG97 Affirmed	12/04/97 96-10121 (Lebanon)
Com. v. Bachert.....	00228HBG97 Affirmed, Dismissed and Remanded	12/01/97 163, 193 & 194 CA 1996 (Tioga)

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<sup>5</sup> A petition for reargument was filed and granted at No. 1425PHL96. The petition for reargument was granted on February 26, 1998. Therefore, this decision is only for the cases at: 1194, 1281, 1324, 1325 and 1470 PHL 96.

App. 45

Com. v.	00078HBG97	12/04/97 96-10057
Baez.....	Affirmed	(Lebanon)
Com. v.	04228PHL96	12/03/97 96-3533
Balas <sup>6</sup> .....	Quashed	(Bucks)
Com. v.	00111PHL97	12/23/97 1290/1989
Banner .....	Affirmed	(Lehigh)
	*       *       *	
Com. v.	00728HBG95	12/17/97 94 CR 000481
Crelin .....	Affirmed and Vacated	(Bradford)
Com. v.	00284PGH97	12/24/97 160 & 161
Cressley.....	Affirmed	of 1996 (Warren)
Com. v.	01194PHL96	12/16/97 9412-442 2/7
Crook <sup>8</sup> .....	Affirmed	(Philadelphia)
Com. v.	03464PHL96	12/17/97 9011-0606
Dangerfield ....	Affirmed	(Philadelphia)
Com. v.	02228PHL96	12/12/97 9401-153
Daniels .....	Affirmed	(Philadelphia)
Com. v.	00351PHL97	12/30/97 9302-3028-1/1
Davis .....	Affirmed	(Philadelphia)
Com. v.	00050HBG97	12/12/97 255-95
Deeghan .....	Affirmed	(Clinton)

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<sup>6</sup> Petition for reargument denied February 13, 1998

<sup>8</sup> A petition for reargument was filed and granted at No. 1425PHL96. The petition for reargument was granted on February 26, 1998. Therefore, this decision is only for the cases at: 1194, 1281, 1324, 1325 and 1470 PHL 96.

App. 46

Com. v. Dennis .....	01831PHL96 Affirmed	12/17/97 9602-1045, 9602-1064 (Philadelphia)
Com. v. Derrick .....	00041HBG97 Affirmed	12/17/97 90-11, 233 (Lycoming)
Com. v. Diangelo .....	00050HBG97 Affirmed	12/16/97 1471 & 1757 of 1990 (Erie)
Com. v. Dickson.....	00303GH97 Affirmed	12/31/97 395 of 1996 (Greene)
Com. v. Dipreta .....	01721PGH96 Affirmed	12/31/97 794 of 1995 (Mercer)
Com. v. Distefano <sup>9</sup> .....	00955PHL97 Affirmed	11/26/97 96-CR-737 (Lackawanna)
Com. v. Dodson.....	01324PGH96 Affirmed	12/31/97 95 CR 884 (Blair)
Com. v. Dohanics.....	00406PGH97 Reversed and Vacated	12/22/97 CL 2378 of 1996 (Allegheny)
Com. v. Dooley.....	01890PHL97 Affirmed	12/15/97 22-SA/1997 (Lehigh)
Com. v. Dorsey .....	00284HBG97 Vacated and Remanded	12/05/97 1582 CD 1994 (Dauphin)
Com. v. Dott .....	00618PGH97 Affirmed	12/17/97 CL97-2571 (Allegheny)

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<sup>9</sup> [Illegible]

App. 47

Com. v. Drayton .....	03452PHL96 Quashed	12/10/97 9107-4421- 4423 (Philadelphia)
Com. v. Dudley .....	03351PHL96 Affirmed	12/17/97 C.P. 8902-3543 (Philadelphia)
Com. v. Duralia <sup>10</sup> .....	00160PGH97 Affirmed	12/02/97 C.A. 1996-373 (Crawford)
Com. v. Dyne .....	00638PGH97 Affirmed	12/24/97 02057 of 1996 (Erie)
	*       *	*
Com. v. Jasterzenski ...	01539PHL97 Reversed, Vacated and Remanded	12/31/97 2365 of 195 (Luzerne)
Com. v. Johnson, Karlton .....	00103HBG97 Vacated and Remanded	12/24/97 96-10, 255 and 96-11, 084 (Lycoming)
Com. v. Johnson, Kevin .....	02607PHL96 Affirmed	12/15/97 93-11-2761 (Philadelphia)
Com. v. Johnson, J. ....	00158HBG97 Vacated and Remanded	12/01/97 3261 CA 1989 (York)
Com. v. Jones .....	03601PHL96 Affirmed	12/04/97 0007-3/3 Jan. T., 1995 (Philadelphia)

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<sup>10</sup> [Illegible]



App. 48

Com. v. Jordan .....	00610PGH97 Affirmed	12/30/97 1261 of 1991 (Fayette)
Com. v. Joynes .....	00014PHL97 Affirmed	12/18/97 3735 1/1 March T., 1992 (Philadelphia)
Com. v. Jumper .....	00893HBG96 Affirmed	12/09/97 95-1594 (Cumberland)
Com. v. Kelly .....	03813PHL96 Affirmed	12/31/97 9307-3522 1/1 (Philadelphia)
Com. v. Kelsay.....	03500PHL96 Vacated and Remanded	12/30/97 1290-95, 1291-95, 1309-95 (Chester)
Com. v. Kennedy .....	03603PHL96 Affirmed	12/31/97 9602-0376 1/1 (Philadelphia)
Com. v. Khathavong <sup>15</sup> ..	01470PHL96 Affirmed	12/16/97 94-12-442 1/7 802-769 (Philadelphia)
Com. v. King.....	01150PHL97 Reversed and Remanded	12/09/97 1861/96 (Berks)
Com. v. Kniskern .....	00649PHL97 Affirmed	12/22/97 96-CR-2778 (Susquehanna)
Com. v. Kott, D.....	00693PGH97 Affirmed	12/31/97 1246-1996 (Cambria)

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<sup>15</sup> A petition for reargument was filed and granted at No. 1425PHL96. The petition for reargument was granted on February 26, 1998. Therefore, this decision is only for the cases at: 1194, 1281, 1324, 1325 and 1470 PHL 96.

App. 49

Com. v.	00694PGH97	12/31/97	1245-1996
Kott, R. ....	Vacated		(Cambria)
Com. v.	02185PHL97	12/16/97	606 of 1993
Krostag .....	Quashed		(Luzerne)
Com. v.	00273HBG97	12/05/97	1996-1947
Kustaborder ...	Vacated		(Centre)
Com. v.	02172PHL97	12/09/97	238 of 1997
Lacorte .....	Affirmed		(Monroe)
Com. v.	00069PGH97	12/30/97	63 of 1996
Landry .....	Affirmed		(Fayette)
Com. v.	00948HBG96	12/15/97	96-0724
Lane .....	Affirmed		(Cumberland)

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Com. v.	00326HBG97	12/05/97	1036 of 1996
Moss .....	Affirmed		(Franklin)
Com. v.	00480PHL97	12/12/97	9510-1161-1/1
Mullins .....	Affirmed		(Philadelphia)
Com. v.	01798PHL96	12/09/97	1473 Dec. T.,
Murphy .....	Affirmed and		1994
	Remanded		(Philadelphia)
Com. v.	02913PHL96	12/18/97	9504-0591
Nathan .....	Affirmed		(Philadelphia)
Com. v.	01425PHL97	12/10/97	1516-1996
Neff .....	Affirmed		(Lancaster)
Com. v.	00043PGH97	12/03/97	00665 of 1991
Nemeth .....	Affirmed		(Erie)
Com. v.	00820PGH97	12/24/97	318 A & B
Noble .....	Affirmed		of 1992
			(Erie)

# App. 50

Com. v. Null .....	00341HBG97 Affirmed	12/05/97 345 CA 1986 (York)
Com. v. Oakes .....	00295PGH97 Affirmed	12/18/97 2630 of 1991 (Erie)
Com. v. O'Dell .....	00423PGH97 Affirmed	12/31/97 270 of 1995 (Elk)
Com. v. Oliver .....	00741PGH97 Vacated and Remanded	12/19/97 CC 9605133 (Allegheny)
Com. v. Olson .....	02238PGH96 Affirmed, Vacated and Remanded	12/26/97 96-580-CRA (Clearfield)
Com. v. Onadein.....	01896PHL97 Affirmed	12/08/97 343-95 (Chester)
Com. v. Page.....	00397PHL97 Affirmed	12/11/97 3086 May T., 1988 (Philadelphia)
Com. v. Patterson.....	00122PGH97 Retained	12/16/97 1142-1143 of 1996 (Erie)
Com. v. Peterson .....	04079PHL96 Affirmed	12/10/97 8711-2486-1/1 (Philadelphia)
Com. v. Pew .....	00459HBG97 Affirmed	12/31/97 2271, 2271(A), 2322 CD 1983 (Dauphin)

# App. 51

Com. v. Piaquadio <sup>16</sup> .....	00678PGH97 Affirmed	12/02/97 17 of 1997 (Potter)
Com. v. Pinckney .....	03521PHL96 Affirmed	12/31/97 9508-0216 <sup>1/2</sup> (Philadelphia)
Com. v. Pinero <sup>17</sup> .....	01281PHL96 Affirmed	12/16/97 9412-442 3/7 (Philadelphia)
Com. v. Plahs .....	00218PGH97 Affirmed	12/03/97 1651 C 1995 (Westmore- land)
Com. v. Platt <sup>18</sup> .....	00467PHL96 Affirmed	11/17/97 2510-95 (Delaware)
Com. v. Powell .....	00110PHL97 Affirmed	12/11/97 SA 40172-96 (Delaware)
Com. v. Prinkey .....	00527PGH97 Affirmed	12/03/97 139-1/2 of 1996 (Fayette)
Com. v. Rabiega .....	02029PHL97 Affirmed	12/31/97 90 CR 171 (Lackawanna)
Com. v. Radle .....	00258HBG97 Affirmed and Remanded	12/04/97 95-928 (Cumberland)
Com. v. Randell .....	03621PHL96 Affirmed	12/01/97 9512-0888 1/1 (Philadelphia)

<sup>16</sup> Petition for reargument denied February 13, 1998

<sup>17</sup> A petition for reargument was filed and granted at No. 1425PHL96. The petition for reargument was granted on February 26, 1998. Therefore, this decision is only for the cases at: 1194, 1281, 1324, 1325 and 1470 PHL 96.

<sup>18</sup> Petition for reargument denied January 26, 1998

App. 52

Com. v. Raynes.....	00091PGH97 Affirmed	12/08/97	1984 CR 15, 150, 612, 657 (Blair)
Com. v. Reaves .....	02755PHL96 Affirmed	12/29/97	0338 Nov. T., 1995 (Philadelphia)
Com. v. Redd .....	01545PGH96 Affirmed	12/11/97	2624 of 1995 (Erie)
Com. v. Rego.....	01987PHL96 Affirmed	12/19/97	9312-2502- 2504 (Philadelphia)
Com. v. Reidenbach.....	00371HBG97 Affirmed	12/05/97	96-0071 (Cumberland)
Com. v. Rice.....	00835PGH97 Quashed	12/30/97	805 & 937 of 1996 (Erie)
Com. v. Rienzi <sup>19</sup> .....	01324PHL96 Affirmed	12/16/97	9412-442 (Philadelphia)
Com. v. Rivera.....	04225PHL96 Modified and Affirmed	12/31/97	95-03-0439-1/1 (Philadelphia)
Com. v. Robinson.....	01654PHL96 Affirmed	12/09/97	9012-0246 (Philadelphia)
Com. v. Rockwell, Rick .....	00430PGH96 Affirmed	12/17/97	75 of 1995 (McKean)

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<sup>19</sup> A petition for reargument was filed and granted at No. 1425PHL96. The petition for reargument was granted on February 26, 1998. Therefore, this decision is only for the cases at: 1194, 1281, 1324, 1325 and 1470 PHL 96.

# App. 53

Com. v. Rockwell, Roy.....	00419PGH96 Affirmed	12/17/97 74 of 1995 (McKean)
Com. v. Rodriguez .....	03955PHL96 Affirmed	12/31/97 89-07-1683 & 1687 (Philadelphia)
Com. v. Rodriguez, E. <sup>20</sup> .....	02107PHL96 Affirmed	12/09/97 M.C. 9504- 1946, M.R. 96-001714 (Philadelphia)
Com. v. Rodriguez, O...	01231PHL96 Affirmed	12/15/97 3980-87 (Montgomery)
Com. v. Rosario .....	03554PHL96 Affirmed	12/12/97 624-1991 (Lancaster)
Com. v. Rues ....	01290PHL97 Affirmed	12/08/97 2139-1996, 2140-1996 (Northampton)
Com. v. Ruiz.....	02108PHL96 Retained	12/11/97 9603-0908 (Philadelphia)

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<sup>20</sup> Petition for reargument denied February 10, 1998

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**EXHIBIT B**

Commonwealth v.	:	IN THE SUPERIOR
Crook, T.	:	COURT OF
Commonwealth v.	:	PENNSYLVANIA
Pinero, N.	:	
Commonwealth v.	:	PHILADELPHIA 1996 -
Rienzi, A.	:	1994, 1281, 1324, 1325,
Commonwealth v.	:	1425 & 1470
Alexander, D.	:	
Commonwealth v.	:	
Johnson, C.	:	
Commonwealth v.	:	
Khathavong, B.	:	

BEFORE: CAVANAUGH, SCHILLER, AND MON-  
TEMURO\*, J.J.

**JUDGMENT**

*ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby AFFIRMED AS TO PHILADELPHIA, 1996 - 1994, 1281, 1324, 1325 and 1470. VACATED AND REMANDED FOR PROCEEDINGS; JURISDICTION RELINQUISHED AS TO PHILADELPHIA, 1996 - 1425.*

BY THE COURT:

/s/ [Illegible]

PROTHONOTARY

Date: DECEMBER 16, 1997

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*Commonwealth v. McGill*, 545 Pa. 180, 188, 680 A.2d 1131, 1135 (1996), *cert. denied*, 117 S. Ct. 1087 (1997). *Accord Commonwealth v. Connolly*, 456 Pa. Super. 133, 689 A.2d 950 (1997). Therefore, this claim of ineffectiveness must also fail.

Finally, concerning the argument that his counsel did not present a defense, while it is true that Rienzi's trial counsel did not call any witnesses on his client's behalf, he did present argument to the jury, did cross-examine Commonwealth witnesses, and did question witnesses who were called by the other appellants. In fact, counsel's closing argument focused on the conflict in the testimony of several witnesses called either by the Commonwealth or the other defendants. Certainly, Rienzi's counsel cannot be deemed ineffective for failing to call as a witness an individual who had already been called by another defendant, when Rienzi's counsel undertook his own examination of the witness. *See e.g. Commonwealth v. Spencer*, 432 Pa. Super. 631, 639 A.2d 820 (1994) (counsel will not be deemed ineffective for failing to call witnesses whose testimony is merely cumulative of other witnesses). Moreover, appellant has not provided the name of any fact witness who would have been

helpful to his case who was not called by any of the defendants at trial. Once again, without specifically alleging how counsel was ineffective, see *Commonwealth v. Silo*, *supra*, appellant has not stated a basis for relief.

In his appeal, appellant Johnson argues that the evidence was insufficient to sustain his conviction for conspiracy.<sup>5</sup> His argument is based on his contention that he was convicted of conspiracy to commit third degree murder.<sup>6</sup> However, our review of the record

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*Commonwealth v. Pearson*, 454 Pa. Super. 313, 685 A.2d 551 (1996) (*en banc*)

<sup>5</sup> In his brief, appellant Johnson also argues that there was not sufficient evidence to convict him of murder as an accomplice. This argument is misplaced because Johnson was not convicted of such a crime. It is true that "[t]he law in Pennsylvania is settled that each conspirator is criminally responsible for the actions of his co-conspirator, provided that the actions are accomplished in furtherance of a common design." *Commonwealth v. Baskerville*, 452 Pa. Super. 82, 93, 681 A.2d 195, 201 (1996), *alloc. denied*, \_\_\_ Pa. \_\_\_, 689 A.2d 230 (1997). Thus, while Johnson could have been convicted of murder based on the actions of his co-conspirators, he was acquitted of such a charge. Therefore, his argument concerning accomplice liability, based on his status as a co-conspirator, is irrelevant to his conviction.

<sup>6</sup> This confusion on the part of appellant's counsel is somewhat understandable in light of comments made by the trial judge during sentencing, and by the position taken by the Commonwealth on this appeal. Therefore, in the interest of justice, we do not consider appellant's misstated argument as a waiver of a future sufficiency argument directed to the judgment of sentence entered on remand. However, depending on which subsection(s) of the aggravated assault statute is (are) found to have been violated, we fail to see how a sufficiency challenge

(Continued on following page)

reveals that Johnson was never charged with conspiracy to commit murder.<sup>7</sup> The criminal information filed by the Commonwealth against Johnson stated only that Johnson agreed with others to commit a crime, and defined the criminal objective as "to beat Eddie Polec."<sup>8</sup> Nowhere in the information filed against Johnson was there an allegation regarding a conspiracy to kill or murder Polec.<sup>9</sup> As the information did not allege the crime of conspiracy to commit murder, Johnson could not have been convicted of such a crime. "The law is clear that a defendant cannot be convicted of an offense which is not the accusation made against him." *Commonwealth v. Speller*, 311 Pa. Super. 569, 579, 458 A.2d 198, 203 (1983); Pa.R.Crim.P. 225(d) ("In all court cases tried

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would be successful. Based on our review of the record, the evidence presented at trial clearly supports a verdict that Johnson was guilty of conspiracy to violate one or more of the subsections of the statute.

<sup>7</sup> Conspiracy does not exist in a vacuum; it requires an agreement to commit a **crime**, and is graded according to the severity of the intended crime. 18 Pa.C.S. § 905(a).

<sup>8</sup> We note that the conspiracy charge filed against Johnson involving Richard Stuber defined that criminal objective as "to beat Richard Stuber." We reject the contention implicit in the Commonwealth's argument that the conspiracy charge as to Polec had to be conspiracy to commit murder because Polec died, while the conspiracy charge as to Stuber had to be conspiracy to commit aggravated assault because Stuber survived.

<sup>9</sup> A separate information filed against Johnson did charge him with murder as to Polec, as well as aggravated assault and simple assault against Richard Stuber. At trial, he was acquitted of these additional crimes.

on an information, the issues at trial shall be defined by such information").

Therefore, we must remand this case to the trial court for a determination of Johnson's conviction, and resentencing following that determination.<sup>10</sup> Accordingly, we are compelled to vacate Johnson's judgment of sentence as entered and remand his case to the trial court.

#### CONCLUSION:

The trial court did not err in refusing to dismiss a juror for cause. The record does not support a conclusion that the Commonwealth used its peremptory challenges in a racially discriminatory manner. The trial court did not abuse its discretion in denying defense motions for mistrial due to prosecutorial misconduct arising out of either the opening statement or closing argument. The trial court did not err

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<sup>10</sup> If the trial court determines that Johnson was convicted of conspiracy to commit aggravated assault, it must then determine which subsection of aggravated assault was involved due to the variance in the offense gravity scores for the different subsections of aggravated assault. Of course, the court must also state the reasons for its sentence, particularly if that sentence is within the aggravated range of the sentencing guidelines or outside the guidelines altogether. In addition, as the trial court recognized, some of the appellants may be subject to the deadly weapon enhancement contained in 42 Pa.C.S. § 9721, 204 Pa. Code § 303.4(a). *But see Commonwealth v. Greene*, \_\_\_ Pa. Super. \_\_\_, \_\_\_ A.2d \_\_\_ (September 30, 1997) (deadly weapon enhancement not applicable to unarmed accomplice).

in instructing the jury on the elements of conspiracy, nor did the court show bias and prejudice in favor of the Commonwealth. Trial counsel for appellant Rienzi was not ineffective as counsel did present a defense. However, as it is unclear of what crime appellant Johnson was convicted, we cannot evaluate his sufficiency argument, and instead are compelled to vacate his sentence and remand his case to the trial court for a final determination of that matter and for resentencing.

The judgment of sentence of appellant Crook [1194 Philadelphia 1996] is affirmed.

The judgment of sentence of appellant Pinero [1281 Philadelphia 1996] is affirmed.

The judgment of sentence of appellant Rienzi [1324 Philadelphia 1996] is affirmed.

The judgment of sentence of appellant Alexander [1325 Philadelphia 1996] is affirmed.

The judgment of sentence of appellant Khathavong [1470 Philadelphia 1996] is affirmed.

The judgment of sentence of appellant Johnson [1425 Philadelphia 1996] is vacated, and the case remanded for proceedings consistent with this Memorandum.

Jurisdiction relinquished.

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App. 60

**EXHIBIT C**

**In the Common Pleas Court  
of the County of Philadelphia**  
CRIMINAL SECTION

COMMONWEALTH OF  
PENNSYLVANIA  
COUNTY OF PHILADELPHIA      ss 9412 0442 7/7

THE DISTRICT ATTORNEY OF PHILADELPHIA  
BY THIS INFORMATION CHARGES THAT ON OR  
ABOUT 11/11/94 IN PHILADELPHIA,  
CARLO JOHNSON

WITH THE INTENT OF PROMOTING OR FACILI-  
TATING THE COMMISSION OF A CRIME

1. AGREED WITH ANOTHER PERSON OR  
PERSONS THAT THEY OR ONE OR MORE OF  
THEM WOULD ENGAGE IN CONDUCT WHICH  
WOULD CONSTITUTE SUCH CRIME OR AN  
ATTEMPT OR SOLICITATION TO COMMIT SUCH  
CRIME, AND COMMITTED, OR SUCH OTHER  
PERSON OR PERSONS COMMITTED, AN OVERT  
ACT IN PURSUANCE OF SUCH AGREEMENT

2. AGREED TO AID SUCH OTHER PERSON  
OR PERSONS IN THE PLANNING OR COMMIS-  
SION OR SUCH CRIME OR IN AN ATTEMPT OR  
SOLICITATION TO COMMIT SUCH CRIME AND  
COMMITTED, OR SUCH OTHER PERSON OR  
PERSONS COMMITTED, AN OVERT ACT IN PUR-  
SUANCE OF SUCH AGREEMENT

App. 61

CO-CONSPIRATORS - A. RIENZI, K. CONVEY,  
T. CROOK, K. BOU, N. PINERO, D. ALEXANDER

CRIMINAL OBJECTIVE - TO BEAT EDWARD POLEC

OVERT ACT - BEAT EDWARD POLEC

NO. OF COUNTS - 1

18 PA.C.S. 903(A).

All of which is against the Act of Assembly and the  
peace and dignity of the Commonwealth of Pennsyl-  
vania.

---

	DISTRICT ATTORNEY	ASSISTANT DISTRICT
		ATTORNEY
12/23/94	LYNNE ABRAHAM	ARLENE FISK

---

—

**RECEIPT****66-40339****DEPARTMENT OF REVENUE****DATE (Use Numerals)****RECEIVED FROM****MONTH****DAY****YEAR**

3

13

6

**ADDRESS****(City)****(State)****(Zip Code)****AMOUNT**

\$ 12.50

**FOR-GIVE PARTICULARS**☐ License☐ Permit**NUMBER**☐ Invoice☐ Plan**CERTIFICATION****FUND**

--	--

**INDEX CODE**

--	--	--	--	--	--

**SOURCE CODE**

--	--	--	--

**NOTE****A SEPARATE RECEIPT IS REQUIRED  
FOR EACH INDEX CODE.****DEPARTMENT**

QS

**CONTACT PERSON**

T J C

**TELEPHONE NUMBER****CERTIFICATIONS** 24 PHILA 001-00012

22 0 13-MAR-06 12:11 66040339

12.50 CASH IN

12.50

**PAYOR THIS IS NOT A LICENSE**

-----THANK YOU-----

App. 63

**In the Common Pleas Court of Philadelphia**

☐ **MUNICIPAL COURT**

☐ **FAMILY COURT DIVISION**

☒ **TRIAL DIVISION, CRIMINAL SECTION**

COMMONWEALTH      December      Term, 1994  
vs.      No. 0442 7/7

*Carlo Johnson*

Sur Charge

**I CERTIFY** the foregoing to be a true and correct copy of the whole Record, in the case above stated, as full, entire and complete as the same now remains of Record in this office.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seal of the said Court this 13 day of March A.D., 2006.

[SEAL]

/s/ [Illegible] E. Gaillard

*Clerk of Courts*

---

App. 64

December 1994 04

COMMONWEALTH VS.

RECORD CON. NO. \_\_\_\_\_

POLICE PHOTO NO. 803538

NAME, A/K/A, ADDRESS ZIP CODE

CARLO JOHNSON

xxx xxx xxx OTN# M6349350

xxx xxx, xxx xxx

YEAR, TERM & NO. 9412 0442 7/7

THIS CASE INVOLVES NOS. 1 to 8

**STATUS OF DEFENDANT**

Bail Set \$ 99999 Bail Made \$ \_\_\_\_\_

Surety Name & Address SURETY CODE 07

PLACE OF PRELIM. HEARING

RM 253 CITY HALL

ISSUING AUTH. SIMMONS, JR. 219

DT. OF INCIDENT 11/11/94

BIRTH DATE xx/xx/xx

SEX M RACE N 1 D.C. NO. 9407032818

ATTY. CD. 87815 Q

M. C. CASE NO. 9411 3224 1/1

COMPLAINT DT. 12/02/94

DT. PREL. HEARING 12/09/94

App. 65

DISM. \_\_\_\_\_

BILL NO. \_\_\_\_\_

DATE 12/23/94

DATE OF ARRAIGN. 12/29/94

POL. SURG. RM. 625

**CHARGE CODES & CHARGES**

CC25020 – MURDER	<u>1-10-96 Plea –</u>
2502 H	<u>Not Guilty /s/ DC</u>

**PRE-TRIAL/TRIAL** \_\_\_\_\_

WAIVER/JURY \_\_\_\_\_

DATE \_\_\_\_\_

ROOM \_\_\_\_\_

COURT STENO \_\_\_\_\_

COURT CLERK \_\_\_\_\_

JUDGE \_\_\_\_\_

ADA \_\_\_\_\_

COUNSEL \_\_\_\_\_

PLEA 12/29/94 Carlo Johnson HAS BEEN AR-  
RAIGNED UNDER [ILLEGIBLE] CRIMINAL CODE  
SECTION 303-306

BY THE COURT:

/s/ [Illegible]



App. 66

/s/ Stokes E. Mott, J.

DEFENSE ATTORNEY

*Defendant's presentence waived*

DEFENDANT

R659

*Hon. Carolyn E. Temin 1-30-95*

ADA: *Joseph Casey*

Atty: *Stokes Mott*

Steno: *Dale Varallo*

Clk: *[Illegible]*

*Bail Motion Hearing Testimony taken from Carl Johnson, father; Reverend Patterson; Evelyn Mosley, Memo of law and pleading filed. Bail Motion is held under advisement C 2-3-95 RM 625 for Motion to Quash*

*By the Court,*

*/s/ [Illegible]*

**VERDICT** *Hon. C. E. Temin 2/15/95 Rm 625.*

*Motion to Quash is Denied. Bail is set in the amount of \$350,000.00. Three hundred and fifty thousand dollars, see attached conditions for bail C-3/27/95 Rm 625 time ruled [illegible]*

*By the Court*

*/s/ [Illegible]*

**DATE**

Judge

**SENTENCE** *1/2/96 Motion to suppress autopsy photos denied in part, granted in part*

**DATE** *1/3/96*

**ROOM** *304*

App. 67

COURT STENO Kevin Flanagan

COURT CLERK Cydney Rhodes

JUDGE Jane Greenspan

ADA Joseph Casey

COUNSEL Oscar Gaskins, Esq.

Jury selection began and (1/5/96) completed 1/10/96 pled  
- not guilty 1/24/96 Motion for judgment of acquittal  
denied. 1/31/96, 11:30 a.m. Jury retired to deliberate.

2/05/96 - Verdict - Not Guilty by the Jury. Jurors  
polled 4:09 PM. Verdict recorded 4:11 PM.

By the Court

/s/ Greenspan J

App. 68

THIS CASE INVOLVES NOS. 2 to 8

**CHARGE CODES & CHARGES**

CC27020 - AGGRAVATED ASSAULT

2702 F1

1-10-96 Plea -

Not Guilty

**PRE-TRIAL/TRIAL**

WAIVER/JURY Selection began and (1/5/96)  
completed

DATE 1/3/96

ROOM 304

COURT STENO K. Flanagan

COURT CLERK C. Rhodes

JUDGE J. Greenspan

ADA J. Casey

COUNSEL O. Gaskins Esq.

PLEA 1/10/96 Plea - not guilty. 1/24/96 Motion for  
judgment of acquittal denied - 1/31/96, 11:30 a.m.  
Jury returned to deliberate.

Hon. Temin 1-30-95 Rm 659

ADA: J. Casey

Atty: Mott

Steno: D. Varallo

Clk: [Illegible]

Bail Motion Hearing Testimony taken from C. John-  
son father; Rev. Patterson and Evelyn Mosley, Memo  
of Law/pleadings filed. Bail Motion is held under  
advisement C 2-3-95 RM 625 for Motion to Quash

By the Court

/s/ [Illegible]

**VERDICT** Not Guilty by the Jury 02/05/96

**DATE** \_\_\_\_\_

By the Court 2/15/95 Rm 625

/s/ Greenspan, J. Motion to Quash Denied

By the Court

/s/ [Illegible]

\_\_\_\_\_  
Judge

**SENTENCE** \_\_\_\_\_

**DATE** \_\_\_\_\_

**ROOM** \_\_\_\_\_

**COURT STENO** \_\_\_\_\_

**COURT CLERK** \_\_\_\_\_

**JUDGE** \_\_\_\_\_

**ADA** \_\_\_\_\_

**COUNSEL** \_\_\_\_\_

\_\_\_\_\_

App. 70

THIS CASE INVOLVES NOS. 3 to 8

**CHARGE CODES & CHARGES**

CC09070 – POSSESSING INSTRUMENTS OF

CRIME      0907      M1

**PRE-TRIAL/TRIAL** \_\_\_\_\_

**WAIVER/JURY** \_\_\_\_\_

**DATE** \_\_\_\_\_

**ROOM** \_\_\_\_\_

**COURT STENO** \_\_\_\_\_

**COURT CLERK** \_\_\_\_\_

**JUDGE** \_\_\_\_\_

**ADA** \_\_\_\_\_

**COUNSEL** \_\_\_\_\_

**PLEA** \_\_\_\_\_

Hon. C. Temin 1-30-95

Bail Motion Hearing Testimony is taken from father,  
Rev. Patterson, E. Mosley; Memo of Law filed. Bail  
Motion is held under advisement C 2-3-95 Rm 625 for  
Motion to Quash

\_\_\_\_\_  
*By the Court*

\_\_\_\_\_  
*/s/ [Illegible]*

**VERDICT** \_\_\_\_\_

**DATE** 2/15/95

App. 71

Motion to Quash filed under advisement C-3-27-95  
Rm 625

By the Court

/s/ [Illegible]

Judge

**SENTENCE** \_\_\_\_\_

DATE March 19, 1996

ROOM 304

COURT STENO Kevin Flanagan

COURT CLERK [Illegible] Hamlin

JUDGE Jane Greenspan

ADA Joseph Casey

COUNSEL Oscar Gaskins, esquire

AND NOW 3/19 1996 the District Attorney with leave of Court enters A Nolle pro [illegible] on the within bill of indictment \_\_\_\_\_

Approved /s/ J. Casey

Asst. District Attorney

/s/ Greenspan

Judge



App. 72

THIS CASE INVOLVES NOS. 4 to 8

**CHARGE CODES & CHARGES**

CC09070 – POSSESSING INSTRUMENTS OF

CRIME      0907      M1

**PRE-TRIAL/TRIAL** \_\_\_\_\_

**WAIVER/JURY** \_\_\_\_\_

**DATE** \_\_\_\_\_

**ROOM** \_\_\_\_\_

**COURT STENO** \_\_\_\_\_

**COURT CLERK** \_\_\_\_\_

**JUDGE** \_\_\_\_\_

**ADA** \_\_\_\_\_

**COUNSEL** \_\_\_\_\_

**PLEA** \_\_\_\_\_

Hon. Temin 1-30-95

Bail Motion Hearing Testimony taken/Memo of Law –  
pleadings filed. Bail Motion is held under advisement  
C 2-3-95 Rm 625 for Motion to Quash

By the Court

/s/ [Illegible]

**VERDICT** \_\_\_\_\_

**DATE** 2/15/95

App. 73

Motion to Quash filed under advisement C-3-27-95  
Rm 625

By the Court

/s/ [Illegible]

Judge

**SENTENCE** \_\_\_\_\_

DATE March 19, 1996

ROOM 304

COURT STENO Kevin Flanagan

COURT CLERK [Illegible] Hamlin

JUDGE Jane Greenspan

ADA Joseph Casey

COUNSEL Oscar Gaskins, esquire

AND NOW 3/19 1996 the District Attorney with leave of Court enters A Nolle pro [illegible] on the within bill of indictment\_\_\_\_\_

Approved /s/ J. Casey

Asst. District Attorney

/s/ Greenspan

Judge

App. 74

THIS CASE INVOLVES NOS. 5 to 8

CHARGE CODES & CHARGES  
CC27010 – SIMPLE ASSAULT

2701 M2

PRE-TRIAL/TRIAL \_\_\_\_\_

WAIVER/JURY \_\_\_\_\_

DATE \_\_\_\_\_

ROOM \_\_\_\_\_

COURT STENO \_\_\_\_\_

COURT CLERK \_\_\_\_\_

JUDGE \_\_\_\_\_

ADA \_\_\_\_\_

COUNSEL \_\_\_\_\_

PLEA \_\_\_\_\_

Hon. Temin 1-30-95

Bail Hearing Motion Testimony taken a Memo of Law/  
pleadings filed. Bail Motion is held under advisement  
C 2-3-95 Rm 625 for Motion to Quash

By the Court

/s/ [Illegible]

VERDICT \_\_\_\_\_

DATE 2/15/95

Motion to Quash Denied

By the Court

/s/ [Illegible]

\_\_\_\_\_  
Judge

App. 75

**SENTENCE** \_\_\_\_\_

DATE March 19, 1996

ROOM 304

COURT STENO Kevin Flanagan

COURT CLERK [Illegible] Hamlin

JUDGE Jane Greenspan

ADA Joseph Casey

COUNSEL Oscar Gaskins, esquire

AND NOW 3/19 1996 the District Attorney with leave of Court enters A Nolle pro [illegible] on the within bill of indictment\_\_\_\_\_

Approved /s/ J. Casey

Asst. District Attorney

/s/ Greenspan

Judge

\_\_\_\_\_

App. 76

THIS CASE INVOLVES NOS. 6 to 8

**CHARGE CODES & CHARGES**

CC27050 – RECKLESSLY ENDANGERING

ANOTHER PERSON 1-10-96 Plea.

2705 M2 Not Guilty

**~~PRE-TRIAL~~/TRIAL**

~~WAIVER~~/JURY Selection began and (1/5/96) completed.

DATE 1/3/96

ROOM 304

COURT STENO K. Flanagan

COURT CLERK C. Rhodes

JUDGE J. Greenspan

ADA J. Casey

COUNSEL O. Gaskins

PLEA 1/10/96 Plea – not guilty. 1/24/96 Motion for judgment of acquittal denied. 1/31/96, 11:30 a.m. Jury retired to deliberate.

Hon. C. E. Temin 1-30-95

Bail Motion Hearing Testimony taken and Memo of Law filed. Bail Motion is held under advisement C 2-3-95 for motion to Quash.

By the Court

/s/ [Illegible]

**VERDICT** Not Guilty by the Jury 02/05/96

**DATE** 2/15/95

App. 77

By the Court

Motion to Quash Denied

/s/ Greenspan, J.

By the Court

/s/ [Illegible]

\_\_\_\_\_  
Judge

SENTENCE \_\_\_\_\_

DATE \_\_\_\_\_

ROOM \_\_\_\_\_

COURT STENO \_\_\_\_\_

COURT CLERK \_\_\_\_\_

JUDGE \_\_\_\_\_

ADA \_\_\_\_\_

COUNSEL \_\_\_\_\_  
  
\_\_\_\_\_



App. 78

THIS CASE INVOLVES NOS. 7 to 8

**CHARGE CODES & CHARGES**

CC09030 - CRIMINAL CONSPIRACY 1-10-96 Plea -

0903

F2

Not Guilty

**~~PRE-TRIAL~~/TRIAL**

~~WAIVER~~/JURY Selection began and (1/5/96) completed.

DATE 1/3/96

ROOM 304

COURT STENO K. Flanagan

COURT CLERK C. Rhodes

JUDGE J. Greenspan

ADA J. Casey

COUNSEL O. Gaskins

PLEA 1/10/96 Plea - not guilty. 1/24/96 Motion for judgment of acquittal denied. 1/31/96, 11:30 a.m. Jury retired to deliberate.

Hon. C. E. Temin 1-30-95

ADA: J. Casey

Atty: S. Mott

Steno: D. Varallo

Clk: [Illegible]

Bail Motion Hearing Testimony Is heard and held under advisement. C 2-3-95 for Motion to Quash

By the Court,

/s/ [Illegible]

App. 79

**VERDICT** Not Guilty by the Jury 02/05/96

**DATE** \_\_\_\_\_

By the Court, 2/15/95

/s/ Greenspan J Motion to Quash

/s/ [Illegible], J.

\_\_\_\_\_  
Judge

**SENTENCE** \_\_\_\_\_

**DATE** \_\_\_\_\_

**ROOM** \_\_\_\_\_

**COURT STENO** \_\_\_\_\_

**COURT CLERK** \_\_\_\_\_

**JUDGE** \_\_\_\_\_

**ADA** \_\_\_\_\_

**COUNSEL** \_\_\_\_\_

\_\_\_\_\_

App. 80

THIS CASE INVOLVES NOS. 8 to 8

CHARGE CODES & CHARGES

CC09030 – CRIMINAL CONSPIRACY 1-10-96 Plea –  
0903 F2 Not Guilty

PRE-TRIAL/TRIAL

WAIVER/JURY Motion to suppress autopsy photos  
denied in part, granted in part.

DATE 1/2/96

ROOM 304

COURT STENO Kevin Flanagan

COURT CLERK Cydney Rhodes

JUDGE Jane Greenspan

ADA Joseph Casey

COUNSEL Oscar Gaskins, Esq. R654

PLEA 1/3/96 Jury selection began and (1/5/96) completed  
completed.

1/10/96 Plea – not guilty. 1/24/96 motion for judgment  
of acquittal denied. 1/31/96, 11:30 a.m. Jury retired to  
deliberate

2/05/96 Guilty by the Jury. Sentencing is deferred pending  
receipt of a Presentence Investigation and a Mental  
Health Evaluation. Bail increased from \$300,000.00  
to \$500,000.00. C 3/19/96 R 200

By the Court

/s/ [Illegible]

Hon. Temin 1-30-95

App. 81

Bail Motions

Is heard and held under advisement. Cont 2-3-95 Rm 625 for Motion to Quash

By the Court,

/s/ [Illegible]

**VERDICT** Guilty by the Jury 02/05/96  
Sentencing is deferred pending receipt of a  
Presentence Investigation and a Mental Health  
Evaluation. Bail increased from \$350,000.00  
to \$500,000.00. C 3/19/96 - R 200

By the Court

/s/ J.

{  
V  
O  
I  
D

**DATE** 2/15/95

Motion to Quash Denied

By the Court,

/s/ [Illegible] J.

Judge

**SENTENCE** 2/8/96 Room 402

**DATE** The Court ordered that the same conditions of  
Bail remain including House arrest

By the Court,

/s/ Greenspan, J.

**ROOM** \_\_\_\_\_

**COURT STENO** \_\_\_\_\_

**COURT CLERK** \_\_\_\_\_

**JUDGE** \_\_\_\_\_

**ADA** \_\_\_\_\_

**COUNSEL** \_\_\_\_\_

App. 82

<b>COMMONWEALTH VS.</b>		<b>SUPPLEMENT TO: INDICTMENT NO.</b>	
NAME, [ILLEGIBLE] ADDRESS, ZIP CODE		YEAR, TERM & NO. <i>94 December</i>	
<i>Carlo Johnson</i>		THIS CASE INVOLVES NOS. <i>0442 7/7 TO # 8</i>	
<b>STATUS OF DEFENDANT</b>			
<b>PROCEEDING</b>			
DATE <i>3/19/96</i>	TYPE <i>Sentencing</i>	COURTROOM <i>304</i>	
COURT CLERK <i>[Illegible] Hamlin</i>		COURT STENO. <i>Kevin Flaniagan</i>	
ADA <i>Joseph Carey</i>		DEF. COUNSEL <i>Oscar Gaskins</i>	
CONT. CODE	CONT. TO RM.	ON ( <i>Date</i> )	
<input type="checkbox"/> B.W. ISSUED		<input type="checkbox"/> BAIL SUED OUT	
<input type="checkbox"/> B.W. WITHDRAWN		<input type="checkbox"/> NEW BAIL	
<input type="checkbox"/> SAME BAIL		\$	
<b>PROCEEDING</b>			
DATE	TYPE	COURTROOM	
COURT CLERK		COURT STENO.	
ADA		DEF. COUNSEL	

# App. 83

CONT. CODE	CONT. TO RM.	ON ( <i>Date</i> )
<input type="checkbox"/> B.W. ISSUED	<input type="checkbox"/> BAIL SUED OUT	
<input type="checkbox"/> B.W. WITHDRAWN	<input type="checkbox"/> NEW BAIL	
<input type="checkbox"/> SAME BAIL	\$	
<b>PROCEEDING</b>		
DATE	TYPE	COURTROOM
COURT CLERK	COURT STENO.	
ADA	DEF. COUNSEL	
CONT. CODE	CONT. TO RM.	ON ( <i>Date</i> )
<input type="checkbox"/> B.W. ISSUED	<input type="checkbox"/> BAIL SUED OUT	
<input type="checkbox"/> B.W. WITHDRAWN	<input type="checkbox"/> NEW BAIL	
<input type="checkbox"/> SAME BAIL	\$	



**DOCKET IN CHRONOLOGICAL ORDER**

*(List Charge No. and follow with  
sentence – signed & dated by Judge)*

*Hon. Jane Greenspan*

*Criminal Conspiracy*

*Not less than five (5) years nor more than ten (10)  
years in the State Correctional Institution. Credit  
time served. Plus \$15,000.00 fine and \$191. manda-  
tory funds.*

*By the Court*

*/s/ Greenspan, J.*

*10/23/98*

**JUDGMENT OF SENTENCE  
AFFIRMED BY THE SUPERIOR  
COURT OF PENNSYLVANIA**

*6/25/99*

**PETITION FOR ALLOWANCE OF  
APPEAL TO THE SUPREME  
COURT DENIED**

*Deft at Mahoney C4-8736*

*8/11/99*

*Record Ret. To. CCP*

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App. 85

[ILLEGIBLE]  
PHILADELPHIA COUNTY

BOOKING # 00000

12/02/94

FELONY P/H

DC # 94-07-032818

MC# 94113224

CRIMINAL COMPLAINT  
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF CARLO JOHNSON  
PENNSYLVANIA VS. AKA

I, THE UNDERSIGNED, DO HEREBY STATE  
UNDER OATH OR AFFIRMATION:

- (1) MY NAME IS: *D. LLOYD* DISTRICT ATTORNEY'S REPRESENTATIVE
- (2) I ACCUSE CARLO JOHNSON WHO LIVES AT xxx xxx xxx, xxx xxx xxx, WITH VIOLATING THE PENAL LAWS OF PENNSYLVANIA ON OR ABOUT FRIDAY, NOVEMBER 11, 1994 IN THE COUNTY OF PHILADELPHIA.
- (3) THE ACTS COMMITTED BY THE ACCUSED WERE:

AT/NEAR 7800 BLK OXFORD AVE, IN CONCERT WITH OTHERS, THE DEFENDANT KNOWINGLY, INTENTIONALLY OR RECKLESSLY CAUSED OR ATTEMPTED TO CAUSE SERIOUS BODILY INJURY TO THE COMPLAINANT, RICHARD STUBER, BY KICKING AND PUNCHING HIM, AND STRIKING HIM ABOUT THE HEAD WITH A BOTTLE, CAUSING INJURIES INCLUDING A FRACTURED

NOSE AND A LACERATION, REQUIRING MEDICAL TREATMENT, AND DEFT UNLAWFULLY POSSESSED TWO BATS

IN VIOLATION OF PA. PENAL LAWS, SECTION(S) AND TITLE(S):

2701-M2 SIM ASSLT	2702-F1 AGG ASSLT
2705-M2 REAP	2702-F2 AGG ASSLT
0907-M1 PIC	0903-F2 CONSP

*12/9/94 - Murder, PEC, Conspiracy*

ALL OF WHICH IS AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF PA.

- (4) I ASK THAT A WARRANT OF ARREST OR A SUMMONS BE ISSUED AND THAT THE ACCUSED BE REQUIRED TO ANSWER THE CHARGES I HAVE MADE. THIS COMPLAINT HAS BEEN REVIEWED AND APPROVED BY CYNTHIA MARTELLI A.D.A.
- (5) I SWEAR TO OR AFFIRM THAT WITHIN COMPLAINT UPON MY KNOWLEDGE, INFORMATION AND BELIEF, AND SIGN IT ON 12/3/94 BEFORE PHILA. MUNICIPAL COURT JUDGE/BAIL COMMISSIONER

\_\_\_\_\_/s/ [Illegible]

SIGNATURE OF AFFIANT

ON 12/3/94 THE ABOVE NAMED AFFIANT SWORE OR AFFIRMED THAT THE FACTS SET FORTH IN THE COMPLAINT WERE TRUE AND CORRECT TO

THE BEST OF HIS/HER KNOWLEDGE, INFORMATION AND BELIEF, AND SIGNED IT IN MY PRESENCE. I BELIEVE THE WITHIN AFFIANT TO BE A RESPONSIBLE PERSON THAT THERE IS PROBABLE CAUSE FOR THE ISSUANCE OF PROCESS.

/s/ Rufus [Illegible]

ISSUING AUTHORITY SEAL

WAIVER: ON \_\_/\_\_/\_\_, I APPEARED BEFORE JUDGE/BAIL COMMISSIONER WHO READ THE ABOVE COMPLAINT TO ME AND EXPLAINED ITS CONTENTS, AND I HEREBY WAIVED PRELIMINARY HEARING AND CONSENT TO BE BOUND OVER TO COURT.

\_\_\_\_\_  
DEFENDANT

\_\_\_\_\_  
DEFENSE ATTORNEY

\_\_\_\_\_

**EXHIBIT D**

COMMONWEALTH	:	IN THE SUPERIOR
OF PENNSYLVANIA	:	COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
CARLO JOHNSON,	:	No. 1425
Appellant	:	Philadelphia 1996

Appeal from the Judgment of Sentence,  
March 19, 1996, in the Court of Common Pleas  
of Philadelphia County Criminal Division,  
No. 0442-8 DEC. TERM 1994

BEFORE: McEWEN, P.J., DEL SOLE, KELLY,  
POPOVICH, FORD ELLIOTT, JOYCE,  
ORIE MELVIN, MUSMANNO and  
SCHILLER, JJ.

**JUDGMENT**

*ON CONSIDERATION WHEREOF, it is now here  
ordered and adjudged by this Court that the judgment  
of the Court of Common Pleas of PHILADELPHIA  
County be, and the same is hereby AFFIRMED.*

**BY THE COURT:**

/s/ [Illegible]

PROTHONOTARY

*Dated:* OCTOBER 23, 1998

\_\_\_\_\_

J.A45022/97-J.A45027/97-3

Commonwealth v.	:	IN THE SUPERIOR
Crook, T.	:	COURT OF
Commonwealth v.	:	PENNSYLVANIA
Pinero, N.	:	
Commonwealth v.	:	PHILADELPHIA 1996 –
Rienzi, A.	:	1194, 1281, 1324, 1325,
Commonwealth v.	:	1425 & 1470
Alexander, D.	:	
Commonwealth v.	:	
Johnson, C.	:	
Commonwealth v.	:	
Khathavong, B.	:	

BEFORE: CAVANAUGH, SCHILLER, AND MONT-  
TEMURO\*, J.J.

*JUDGMENT*

*ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of PHILADELPHIA County be, and the same is hereby AFFIRMED AS TO PHILADELPHIA, 1996 – 1194, 1281, 1324, 1325 and 1470. VACATED AND REMANDED FOR PROCEEDINGS; JURISDICTION RELINQUISHED AS TO PHILADELPHIA, 1996 – 1425.*

*BY THE COURT:*

/s/ [Illegible]

*PROTHONOTARY*

*Dated: DECEMBER 16, 1997*

---



**EXHIBIT E**

[362] will argue some other time.

THE COURT: One thing is absolutely clear here: The jury did not convict him with regard to Mr. Stuber.

MR. GASKINS: That's correct, Your Honor.

THE COURT: The only convictions here, in this entire case, from this same jury were as to Mr. Polec. So, as to whether it was Conspiracy to commit Aggravated Assault, or Conspiracy to commit Murder, I may have a question, but there is no question, given the fact that they came back with a not guilty as to Mr. Stuber – there is no question that the Conspiracy applies, at a minimum, to Aggravated Assault, F-1. There is no question of that.

MR. GASKINS: I accept the position, there is no question, although I have innumerable questions concerning that.

In any event, after having listened to you, and after having listened to the witnesses, and having heard you indicate that the Defendants in this case were given whatever breaks they were going to get by the jury, and after having listened to your sentences, I would point out that I have any one of a number of witnesses in

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App. 91

[ILLEGIBLE]  
CENTRAL REPOSITORY  
1800 ELMERTON AVENUE  
HARRISBURG, PENNSYLVANIA 17110  
(717) 787-9092

COMPILED: 01/17/2007

PAGE: 1

-----  
USE OF THE FOLLOWING CRIMINAL HISTORY  
RECORD FOR \*\*\* SID/225-14-02-4 \*\*\* REGU-  
LATED BY ACT 47, AS AMENDED.

III - SINGLE STATE OFFENDER

-----  
DOB: xx/xx/xxxx SEX: M RAC: B  
SOC: xxx-xx-xxxx FBI: 823223WA1

-----  
NAME: JOHNSON, CARLO EBON OTN: E964623-2  
ARRESTED: 07/31/1994 PA0460100 ABINGTON  
TWP PD OCA: A12101  
DISPOSITION DATE: 11/21/1994  
DISTRICT JUSTICE: 38105

07/31/1994 CC2701A1	SIMPLE AS-	QUASHED/
	SAULT - M2	DISMIS/
		DEMUR SUS
07/31/1994 CC2709^1	HARASS-	QUASHED/
	MENT - S	DISMIS/
		DEMUR SUS
07/31/1994 CC2709A3	HARASS-	QUASHED/
	MENT - S	DISMIS/
		DEMUR SUS
07/31/1994 CC5503A1	DISORDERLY	QUASHED/
	CONDUCT -	DISMIS/
	M3	DEMUR SUS

App. 92

07/31/1994 CC5503A4 DISORDERLY QUASHED/  
CONDUCT - DISMIS/  
M3 DEMUR SUS

+++++

NAME: JOHNSON, CARLO OTN: M634935-0

ARRESTED: 12/02/1994 PAPEP0000

PHILADELPHIA PD OCA: C803538

DISPOSITION DATE: 03/19/1996

COMMON PLEAS DOCKET: CP9412-0442

11/11/1994 CC2702 AGGRAVATED FOUND NOT  
ASSAULT - F1 GUILTY

11/11/1994 CC2701A SIMPLE AS- NOLLE  
SAULT - M2 PROSSED/  
WITHDRAWN

11/11/1994 CC2705 RECKLESSLY FOUND NOT  
ENDANGERING GUILTY  
ANOTHER - M2

11/11/1994 CC907A POSSESSION NOLLE  
INSTRUMENT PROSSED/  
OF CRIME WITHDRAWN  
002 CTS - M1

11/11/1994 CC903 CRIMINAL CON-FOUND NOT  
SPIRACY - F2 GUILTY

11/11/1994 CC0903 CRIMINAL FOUND GUILTY  
CONSPIRACY/ REGIONAL  
AGGRAVATED CORRECTION  
ASSAULT 05 YRS - 10  
(CC2702) - F2 YRS FINES  
AND COSTS

11/11/1994 CC2502 MURDER FOUND NOT  
GUILTY

+++++

F = FELONY, M = MISDEMEANOR, S = SUMMARY  
AND THE NUMERIC = THE DEGREE.

App. 93

ARREST(S) SUPPORTED BY FINGERPRINT  
CARD(S) ON FILE.

RESPONSE BASED ON COMPARISON OF  
REQUESTER FURNISHED INFORMATION AND/OR  
FINGERPRINTS AGAINST A NAME INDEX  
AND/OR FINGERPRINTS CONTAINED IN THE  
FILES OF THE PENNSYLVANIA STATE POLICE  
CENTRAL REPOSITORY ONLY, AND DOES NOT

\* \* \*

---

[LOGO] **CITY OF PHILADELPHIA PRISONS**  
**CLASSIFICATION, MOVEMENT &**  
**REGISTRATION**  
**7901 STATE ROAD, PHILA., PA 19136**

**Robert J. Durison**  
**Director**

**Brian Fallen, Captain**  
**Population Control Unit**

**Carlos O. Sesto, Sergeant**  
**Chief Registrar**

**Rosemarie O'Connor,**  
**Lieutenant**  
**Movement**  
**Coordinator**

**Christopher Thomas**  
**Interim**  
**Classification Coor.**

Inmate Records  
State Correctional Institution  
at Mahanoy  
301 Morea Rd.  
Frackville, PA 17932

Atten: Edward Martin, RS

Re: Carlo Johnson  
CY-8736  
CP 94-12-0442  
FID #803-538

App. 94

Dear Mr. Martin:

Enclosed find corrected, sealed custody check memorandum on the above case.

Mr. Johnson was initially given incorrect presentence credit on Judge Greenspan's sentence of 3-19-96. He is entitled to presentence credit from his arrest date of 12-2-94 to 12-6-94; from 12-9-94 to 7-7-95; & from 2-5-96 to 3-15-96. He was sentenced and reimprisoned 3-19-96.

A sealed copy of this memorandum is being forwarded to the Philadelphia Clerk of Quarter Sessions Office. Records Staff who note any discrepancies in what I have sent can call me. Inmates who dispute my calculations should contact their attorneys: they should not write to me.

Sincerely yours,

/s/ Robert J. Durison

Robert J. Durison

Dir. - CMR

Tel. 215-685-8487

RJD/pd

Enclosures

cc: Francine Nicolucci, Clerk of Quarter Sessions  
Carlo Johnson, CY-8736, SCI Mahanoy  
File

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App. 95

DC-16D

**SENTENCE STATUS SUMMARY**  
**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF CORRECTIONS**

**1. SENTENCE SUMMARY**

Class of Sentence

☐ DEFINITE   ☒ INDEFINITE   ☐ GENERAL  
☐ LIFE   ☐ COMMUTED LIFE   ☐ EXECUTION

Date 3-19-96   County PHILADELPHIA

Number, Term

Court, Indictment CP0442; 12/94

Type Sent \_\_\_\_\_

Minimum Y 5 M D   Maximum Y 10 M D

Judge JANE GREENSPAN

Offense CR. CONSP./AGG. ASLT.

Offense Tracking Number M63493

Continued From DC# \_\_\_\_\_

Plea NOT GUILTY

Total Sentence:

Minimum Y 5 M D   Maximum Y 10 M D

Commitment Credit SEE REMARKS

Fines \_\_\_\_\_ Costs \_\_\_\_\_ Restitution \_\_\_\_\_

Summary or Remarks on Sentence CREDIT: XXX  
12-3-94 TO 12-6-95. Credit adjusted 9/23/99 as per  
letter from Mr. Durison in Philadelphia as follows:  
12/2/94 to 12/6/94; 12/9/94 to 7/7/95 and 2/5/96 to 3/16/96.



App. 96

## 2. DATES SECTION

[Boxed Area Was Crossed Out In This Area]

Item	Original	Change #1	Change #2
DATE OF RECEPTION	03-22-96	03-22-96	<u>3-22-96</u>
EFFECTIVE DATE	08-20-95	03-16-95	<u>07-10-95</u>
EXPIRATION OF MINIMUM	08-20-2000	03-16-2000	<u>07-10-2000</u>
EXPIRATION OF MAXIMUM	08-20-2005	03-16-2005	<u>07-10-2005</u>
EFFECTIVE DATE - PV	XXXXXX		
DELINQUENT TIME	XXXXXX		
BACKTIME	XXXXXX		
NEW MAXI- MUM - PV	XXXXXX		
SENTENCE CHANGE	XXXXXX	04-19-96	<u>09-23-99</u>
BASIS FOR CHANGE	XXXXXX	CORRECTED CREDIT	<u>Adjusted Credit</u>
NEW SENTENCE	XXXXXX		<u>5Y - 10Y</u>

1st Release: Method - Inst. - Date \_\_\_\_\_

2nd Release: Method - Inst. - Date \_\_\_\_\_

3rd Release: Method - Inst. - Date \_\_\_\_\_

4th Release: Method - Inst. - Date \_\_\_\_\_

App. 97

3. REFERENCES AND IDENTIFICATION

1st Admission: Inst. - Date AC/EDCC 3-22-96

2nd Admission: Inst. - Date TRN/CDCC 4-5-96

3rd Admission: Inst. - Date SCI Mahanoy 7-19-96

4th Admission: Inst. - Date \_\_\_\_\_

Prosecuting Police Department

PHILADELPHIA CTY PD

Place of Birth PHILADELPHIA, PA

Date of Birth 11-14-75 Marital Status SIN.

R-S B/M DC Number CY-8736

PBPP Number \_\_\_\_\_ SID Number 2251402-4

Name JOHNSON, CARLO ☐ TN ☐ ALIAS

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App. 98

FORM DC-23B

**SENTENCE STATUS CHANGE REPORT**

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF CORRECTIONS

INSTITUTIONAL NUMBER CY-8736

PBP NUMBER \_\_\_\_\_

COMMITMENT NAME JOHNSON, Carlo  
SID: 22514024

INSTITUTION Mah[o]n[e]y

DATE OF REPORT 9/23/99

A SENTENCE STATUS CHANGE REPORT IS  
SUBMITTED ON THE ABOVE INMATE, AS INDI-  
CATED BY THE CHECKED SECTION(S)

☒ 1. THE SENTENCE WHICH THIS INMATE IS  
CURRENTLY UNDERGOING IS AS FOLLOWS:

SENTENCE 5Y - 10Y

EFFECTIVE DATE 3-16-95

EFFECTIVE DATE-PV \_\_\_\_\_

MINIMUM DATE 3-16-2000

MAXIMUM DATE 3-16-2005

BACKTIME IF PV \_\_\_\_\_

PV MAXIMUM DATE \_\_\_\_\_

OFFENSE(S) Crim Consp Aggravated Assault

COURT - INDICTMENT NUMBER - TERM  
CP# 9412-0442

COUNTY Philadelphia

REMARKS \_\_\_\_\_

App. 99

- ☒ 2. THE SENTENCE WHICH THIS INMATE IS CURRENTLY UNDERGOING IS CHANGED AS FOLLOWS:

TYPE OF CHANGE

- ☐ OVERLAPPING CONCURRENT SENT.  
☐ UNDERLAPPING CONCURRENT SENT.  
☐ RECONSIDERED SENTENCE  
☐ CORRECTED COMMITMENT  
☐ COMMUTED SENTENCE  
☒ RECOMPUTED SENTENCE

SENTENCE 5Y - 10Y

EFFECTIVE DATE 7-10-95

EFFECTIVE DATE-PV \_\_\_\_\_

MINIMUM DATE 7-10-2000

MAXIMUM DATE 7-10-2005

BACKTIME IF PV \_\_\_\_\_

PV MAXIMUM DATE \_\_\_\_\_

PROSECUTING POLICE DEPARTMENT

Philadelphia PD

JUDGE Greenspan

DATE OF SENTENCE 3-19-96

PLEA \_\_\_\_\_ ESCAPE TIME \_\_\_\_\_

OFFENSE(S) Crim Consp Aggravated Assault

COURT - INDICTMENT NUMBER - TERM

CP# 9412-0442

COUNTY Philadelphia

REMARKS Credit adjusted per  
Mr. Robert Durison - See item 7

- ☐ 3. FOLLOWING COMPLETION OF THIS INMATE'S CURRENT SENTENCE, HE WILL BE REENTERED TO SERVE THE FOLLOWING:

SENTENCE \_\_\_\_\_

JUDGE \_\_\_\_\_

DATE OF SENTENCE \_\_\_\_\_

PLEA \_\_\_\_\_ REENTER AT \_\_\_\_\_

OFFENSE(S) \_\_\_\_\_

COURT - INDICTMENT NUMBER - TERM

\_\_\_\_\_

COUNTY \_\_\_\_\_

REMARKS \_\_\_\_\_

- ☐ 4. A DETAINER HAS BEEN LODGED AGAINST THIS INMATE AS FOLLOWS:  
(PLEASE SEE OVER)

FROM (INCLUDING ADDRESS) \_\_\_\_\_

CHARGING \_\_\_\_\_

DETAINER DATE \_\_\_\_\_

INDICTMENT-WARRANT NOS. \_\_\_\_\_

REMARKS \_\_\_\_\_

- ☐ 5. A DETAINER PREVIOUSLY LODGED AGAINST THIS INMATE HAS BEEN DROPPED AS FOLLOWS:

FROM (INCLUDING ADDRESS) \_\_\_\_\_

CHARGING \_\_\_\_\_

DETAINDER DATE \_\_\_\_\_

INDICTMENT-WARRANT NOS. \_\_\_\_\_

METHOD OF DISPOSITION \_\_\_\_\_

REMARKS \_\_\_\_\_

- ☐ 6. YOUR APPLICATION FOR COMMUTATION HAS BEEN REVIEWED BY THE BOARD OF PARDONS, AND IT WAS:
- ☐ GRANTED - SEE SECTION #2 ABOVE
  - ☐ CONTINUED
  - ☐ REFUSED
  - ☐ HELD UNDER ADVISEMENT
  - ☐ WITHDRAWN
  - ☐ PASSED
- ☒ 7. Previous credit was 12-3-94 to 12-6-95. Per letter from Mr. Dusirson dated 9-17-99 credit on this case was changed. Credit for time served 12-2-94 to 12-6-94, 12-9-94 to 7-7-95 and 2-5-96 to 3-15-96.

RECORD OFFICER'S  
SIGNATURE

/s/ Edward R. Martin

RECORD OFFICER'S  
NAME

Edward R. Martin,  
Records Supervisor

**WHITE** - Inmate's Copy

**CANARY** - PBP'S Copy

**GREEN** - Institution Distribution Copy (See over)

**WHITE** - DC-15 IRJ Copy

**PINK** - DRS'S Copy

**BLUE** - BCI'S Copy

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App. 102

[LOGO]

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS  
STATE CORRECTIONAL  
INSTITUTION AT MAHANAY

301 Morea Road  
Frackville, PA 17932  
(570) 773-2158

JEFFREY A. BEARD, Ph.D.    ROBERT D. SHANNON  
Secretary                      Superintendent

DENNIS R. ERHARD  
Deputy Secretary  
Eastern Region

ANTHONY L. PETRUC  
Deputy Superintendent  
for Facilities Management

EDGAR M. KNEISS  
Deputy Superintendent  
for Centralized Services

DATE: June 26, 2001

To Whom It May Concern:

Please consider this as appropriate identification  
for Carlo Johnson to cash **check number** 48100  
in the **amount** of \$31.77

Mr. Johnson was recently released from  
this facility and has no other means of identification.

App. 103

Any questions, please contact me at 570/773-2158  
ext. 412. Thank you.

Sincerely,

Patrice A. Pavlik  
Inmate Accounts

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